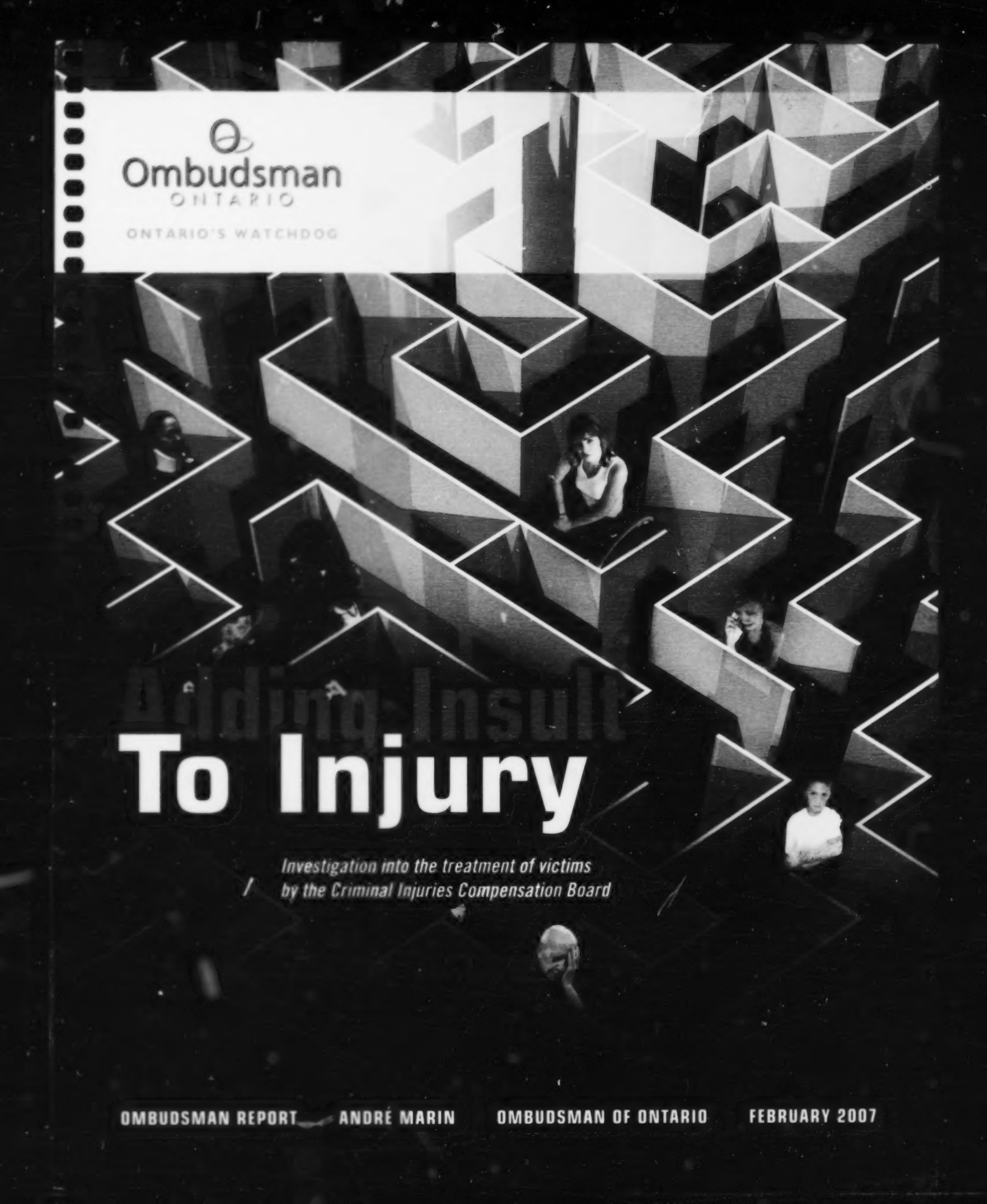
Ombudsman
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ONTARIO'S WATCHDOG
Adding Insult
To Injury
Investigation into the treatment of victims
by the Criminal Injuries Compensation Board
OMBUDSMAN REPORT
ANDRÉ MARIN
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FEBRUARY 2007

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Ombudsman Report

Investigation into the Treatment of Victims by the Criminal Injuries Compensation Board

"Adding Insult to Injury"

André Marin
Ombudsman of Ontario
February 2007

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Executive Summary

1 The Criminal Injuries Compensation Board is in deplorable shape. Instead of holding out support for victims of violent crime, the Criminal Injuries Compensation Board often greets them with bureaucratic indifference and suspicion. Instead of giving steadfast and urgent assistance, it trades in technicality and embraces delay. As a result, instead of providing relief, the Criminal Injuries Compensation Board too often adds insult to injury.

2 The primary reason for the Board's colossal failure is that successive Ontario governments have been unprepared to fund the promises they have made to crime victims. The Province has proclaimed a grandiose program of support through the *Compensation for Victims of Crime Act*, but then imposed fiscal control so tightly that it has choked off not only the Criminal Injuries Compensation Board's effectiveness, but its compassion as well. Today, the primary responsibility for this lies with the present government, and urgent action is needed.

3 Ontario's criminal injuries compensation scheme is impressive – on paper. The *Compensation for Victims of Crime Act* provides for compensation to a broader range of victims, in larger amounts, and for a greater range of injuries than most other provincial plans. This Cadillac program establishes the only purely adjudicative model in the country in which claims are determined on their legal merits by an independent, quasi-judicial tribunal – the Criminal Injuries Compensation Board.

4 By law, the Board is obliged to receive claims and determine appropriate awards, unfettered by extraneous influences. Unfortunately, it has never been permitted to do so. One government after another has hindered its statutory mission by giving the Criminal Injuries Compensation Board an unrealistically low budget and then forcing it to pay out of that budget not only its own operating costs, but any compensation it awards.

5 This has had predictable consequences. First, it has undermined the Board's independence, leaving it vulnerable to Ministry direction and governmental interference. On a number of occasions, the Board has been told by the Ministry of the Attorney General to place a moratorium on its awards, or delay payment, so it will not exceed its budget. Second, the Board has been forced to limit how much it pays for such things as funeral expenses and therapy. This shortchanges victims because of fiscal considerations, contrary to the promises of the statute. Third, and of most concern, underfunding has created within the Criminal Injuries

Compensation Board a bureaucratic culture that is harming those who are in need of help. Here are the cold facts:

6 It takes, on average, three years for an application to be processed. Of those applications that are received – approximately 4,000 to 5,000 per year – the Criminal Injuries Compensation Board succeeds in adjudicating, on average, only 2,500 per year. The Attorney General has predicted that by October 2007, there will be 17,500 backlogged compensation claims worth $109 million. It does not take any proficiency in accounting to realize that the Criminal Injuries Compensation Board budget cannot come close to paying the type of compensation promised by law.

7 It is crystal clear that the Board has had to embrace delay to survive. With its current funding, it has no choice but to depend on delaying today's claims in the hope that tomorrow's dollars will take care of them. Applications languish in a system in which each stage drags on for months – it takes several months for an application to be entered into the system, nearly two years for it to be analyzed and sent for a hearing, and many more months after a hearing for a decision to be made and payment sent. But the sad truth is that if the Board did things faster, it would deplete its budget faster. So it has had to embrace lethargy and delay. It could not afford to try to keep up, even if it had the personnel and systems in place to do so.

8 The Board's most discreditable delay strategy is to wait pointlessly for criminal proceedings to be completed before processing the overwhelming majority of its cases. In this way, the Board can take a leisurely ride on the glacier of criminal prosecution, which can itself take years. One justification offered for this unacceptable habit is that a hearing might prejudice the criminal process. This is nonsense. The criminal law has ample means to prevent compensation awards from prejudicing criminal trials. This is a delay strategy and nothing more.

9 The Board depends, shamefully, on attrition as well. Approximately half of those who attempt to file claims are so overwhelmed by the Board's complex documentation and process-based demands that they give up. There are 25,000 "virtual claims" in the system – applications that have been sent to victims but have never been returned. There is also an imposing inventory of incomplete files that the Board has closed "administratively." These applicants are not helped when they founder, but left to fail. This report chronicles an embarrassing series of hurdles placed in the path of vulnerable victims of violent crime.

10 Each year, the Board receives 35,000 calls from victims, and sends out 7,500 new applications for compensation. Close to half of those will ultimately give up, because they are buried under an avalanche of complex and at times redundant forms that would give a tax lawyer pause. To make matters worse, the documentation requires victims to rehash painful details of their suffering.

11 The officious and inflexible way in which the Criminal Injuries Compensation Board processes documents only exacerbates the attrition. An astounding 40% of documents submitted by victims are sent back to be revised, even where the deficiency is not only immaterial but trivial. The Board has something of an official document fetish, treating them with the sanctity and rigidity of legal evidence rather than as pleas for help from lay people who are vulnerable, distraught and in need.

12 But delaying today's claims for 1,000 days and leaving hundreds of applicants by the wayside is still not enough to ensure that the Criminal Injuries Compensation Board can stay within or close to its budget. Despite the promise made in the *Victims' Bill of Rights* that the Province will make crime victims aware of the compensation process, only one in 40 victims of violent crime even tries to apply, a situation that testifies to a massive outreach failure.

13 The obvious conclusion is that the Criminal Injuries Compensation Board functions, even in the unimpressive way it does, by flying under the radar so that only a miniscule number of entitled claimants ever come forward. It creates hyper-technical hurdles that discourage applicants and stockpiles the claims made by those who are uncommonly persistent. This is a shocking state of affairs. The Criminal Injuries Compensation Board is not an institution to be celebrated. It is an embarrassment. To understand why, we need only look at the human side of this sad story:

14 In this report, I detail the plight of **William Jentzel (page 8)**, who was injured so badly that he needed his father's help to apply for funding for therapy, only to be told that the application his father filed was deficient because William had not applied personally and his father had included unnecessary information in his application form. He was told that his father could not even ask to have a missing form forwarded to him; William would have to ask for the form himself. The Jentzels waited for three years while their file languished before receiving the support to which they were entitled.

15 I also speak of **Jeffrey Downes (page 26)**, who waited so long for compensation after an attacker shattered his arm – 40 months – that he died waiting. This report

tells the outrageous story of how his father was told, in effect, that he should not complain about the delay because the application, which lapsed with Jeffrey's death, had actually been processed more quickly than usual.

16 I recount the shocking saga of **Aurelio Almeida (page 29)**, whose five-year-old daughter was raped and murdered – but who was treated as though he was a con artist trying to scam the Criminal Injuries Compensation Board, rather than as a survivor of a horrific crime. After that, the Board refused to confirm that Mr. Almeida's compensation had been granted and was awaiting processing, even when the man – incapable of supporting his family because of his grief – was facing eviction and needed to be able to reassure his landlord that money was coming.

17 I share **"Melissa's" story (page 41)**. Having endured an attack in which she was held hostage, beaten and sexually violated for seven straight days, she was nearly defeated by the compensation process. She was only able to meet the Board's stringent demands with the support of a student legal clinic. Still, she was made to undergo an oral hearing and to relive her victimization pointlessly, even though nothing she asserted was contested. In a similar vein, I relate the experience of **Joseph Wamback (page 44)**, who quit in exasperation after trying to get compensation to transport his injured teenage son to therapy, and who was left so frustrated that he is now a victims' rights advocate.

18 Finally, I tell of **Eva-Marie Devine (page 45)**, a blind retiree who had to choose between food and burying her murdered daughter, and who, in her desperation, was shuffled between a dozen Board workers and repeatedly told to redo her documentation before she could get help. Like many other claimants, she was threatened by Board staff for having forgotten her file number. She was made to feel like a beggar and a bother rather than a legally entitled claimant who warranted the urgent help of the people of this province.

19 I report these shocking stories of real people in order to demonstrate how, in its drive to survive, the Board has focused on protecting its meagre resources while forgetting that its practices are adding to victims' suffering. When systems and suspicion replace sympathy and compassion in an institution such as this, it has lost its way.

20 The Board has not done this on its own. Its compass has been lost by the Government of Ontario, the same body that so piously pledges its support to victims of crime.

21 Neither this Government, nor any of its predecessors, can plead ignorance. The Government did not need my investigation to uncover the problems I have identified, or their human toll. My Office has fielded numerous complaints over the years which have been brought to the Ministry. As this report shows, many cabinet documents and official missives have recounted how applicants are being "revictimized" and left frustrated and dispirited by the Board. There is no denying that successive governments have stood by, posing as victims' rights advocates, watching the process harm the very people it was meant to help. They have stood by with eyes wide shut, knowing that they were breaking the promises made in the laws of this province.

22 Worse, they have done nothing constructive about it. Successive governments have stood frozen at the crossroads, afraid to move – unwilling to give the Board the funding it needs to help rather than hurt, yet unprepared to absorb the political fallout that would surely result from abolishing or maiming a criminal compensation scheme that looks so fine on paper. Instead, governments, including the current one, have chosen the oldest delay strategy known to bureaucracy – pretending to act by studying the thing to death.

23 This report details a cascade of proposals and initiatives for reforming the Criminal Injuries Compensation Board – revealed in documents uncovered during this investigation – which have been batted about over the years in what amounts to a game of policy ping-pong **(pages 57-66)**. Meanwhile, nothing has been done.

24 This lack of political will has been dressed up as a need for "more time to consult with stakeholders and potential service providers." Yet victims and stakeholders have never truly been consulted in an effective way. The time for study is over. The time for action has arrived. I am therefore making a host of recommendations in this report.

25 Remarkably, the one plan that never seems to have been given careful consideration, according to the reams of documents this investigation examined, is the "keep our promise" plan. This is the strategy I recommend in this report: To give the victims' compensation program the funding it needs to do its job and fulfill the solemn promise to Ontarians that is ensconced in law. It is not as though the Government is being called upon to undertake a new budgetary initiative – this commitment began with the *Compensation for Victims of Crime Act* in 1971, and it is reiterated by every government that leaves that law on the books. If the Criminal Injuries Compensation Board looks too infirm to salvage, it is because we have never given it a chance to live up to its legal billing.

26 One of the surprising things this investigation revealed was the health of the Victim Justice Fund, a pot of money set aside for victims' needs. It holds tens of millions of dollars, collected from lawbreakers through the Victim Surcharge that is levied on all provincial fines in Ontario and against federal offenders. Today, three Canadian jurisdictions use victim surcharge money to pay for their victim compensation schemes. Inexplicably, Ontario does not. It considers the money to be sacrosanct – to be used for other victims' rights initiatives, even while it taps the Fund from time to time for short-term subsidies to its compensation scheme. Yet most of the money in the fund is not being spent. As a result, a pool of funds dedicated to the relief of victims sits unused, while Ontario victims of violent crime are being harmed by the Criminal Injuries Compensation Board because of budget shortfalls.

27 The Criminal Injuries Compensation Board model does not appear to fit the Ministry's current budget-driven vision of victims' rights. The ultimate design and form of the victims' rights package provided in this province is not for me to say. It is for me to say, however, that the law of this province promises compensation, but the Government refuses to provide it.

28 This is unjust. That is why I am recommending that the Ministry of the Attorney General immediately provide the Criminal Injuries Compensation Board with enough resources to process claims in a timely and efficient manner. Instead of frustrating its mission, the Ministry must recognize and respect the independence of this quasi-judicial body by giving the Board the funding it needs to discharge its legal obligation. In addition, outreach efforts need to be redoubled, and stakeholders consulted in any planning that may be underway to modify, replace or abolish the Board.

29 For the Board's part, it must replace a culture of survival with one of support and caring, lest it continue to do more harm than good. With this in mind, I am making a range of recommendations, dealing with everything from documentation review to victim support – and I call on the Board to undertake an internal review of its policies, practices and procedures and to adopt an advisory board that will include stakeholders.

30 Having thoroughly investigated the systemic problems confronting the Criminal Injuries Compensation Board and its Ministry overseers, I cannot overstate the human costs that have been expended in favour of concern about fiscal restraint. It is perverse when those human costs are borne by crime victims and imposed by an agency that was designed to help them. The government cannot stand frozen at the crossroads any longer. It is time to find the courage to help heal.

Overview

31 What an intolerable irony. The Criminal Injuries Compensation Board was established so that we in Ontario could give financial support to those among us who have become victims of violent crime. Yet the Board has become so dysfunctional that it often causes more frustration and hurt to crime victims than it relieves. Rather than operating as the face of compassion, it has been allowed to become for many victims the face of bureaucratic indifference. With its rule-obsessed, paper-shuffling culture, its pace is glacial. Far from serving as the comfort to victims it was intended to be, it denies them closure through cruel delays.

32 The primary responsibility for this colossal failure does not rest with those who work for the Criminal Injuries Compensation Board. Of course, as will become apparent in this report, some of those people have, on occasion, exercised imperfect judgment, but this does nothing to distinguish them from the rest of us, and making that observation will do little to make things better. The Board has been placed in an untenable position of divided loyalty between its resolve to give victims of violent crime their due, and its need to survive.

33 The bulk of the responsibility lies with the Government of Ontario because it has, through its Ministry of the Attorney General, developed a culture that is unsupportive of the Criminal Injuries Compensation Board, and because it has made promises in the *Compensation for Victims of Crime Act* that it will not keep. Successive provincial governments have frustrated the ability of the Criminal Injuries Compensation Board to issue awards, simply by refusing to fund them. As a result, the Criminal Injuries Compensation Board cannot do its job. To cope, it has not only had to operate understaffed, using antiquated and inefficient systems, but it has come to rely on delay as a strategy for keeping within budget.

34 What makes all of this most troubling is that successive governments, though fully aware that the Criminal Injuries Compensation Board has been in perpetual crisis, have responded either with Band-Aids or no aid. They have stood frozen with fear and indecision at the same fork in the road. The first of the two paths before them – to ensure the Criminal Injuries Compensation Board has the funds it needs to do its legislated task – has not been taken because it is uninviting for governments averse to increasing spending. But the alternative path – reducing costs by scaling down victim compensation – is politically frightening. No government wants to be seen as the one that reduced the rights of crime victims.

35 As governments have stood at this fork in the road, studying their options, they have all ultimately made the same discreditable decision – to do nothing. They have chosen to watch with eyes wide shut as the Criminal Injuries Compensation Board has degenerated into the failed institution it is.

36 It is not my job to advise the government on matters of policy. In this report, I review the options that have been considered in recent years for revising delivery of financial aid to crime victims, but, mindful of limits on both my mandate and expertise, I endorse none. It is my job, however, to point out what the *Ombudsman Act* describes as "unreasonable, oppressive, unjust or wrong" conduct – and it is, without question, unreasonable, oppressive, unjust and wrong for the Government of Ontario to make a promise to crime victims that it will not keep.

37 These people are in pain. Some are even broken. It is unconscionable to raise their expectations of the Criminal Injuries Compensation Board as a support institution and entice victims into applying for relief, only to sit idly by and watch the Board dish out more frustration and delay than compensation. It is unreasonable, oppressive, unjust and wrong for the Government of Ontario to do nothing while the regime it has created trades in technicality, develops policies that seem designed to facilitate denial, often greets victims more with suspicion than compassion and then employs delay as its ultimate coping strategy. It is unreasonable, oppressive, unjust and wrong to permit a victims' rights instrument to harm people when they are at their most vulnerable.

38 William Jentzel's story provides an example. His story is apt because William Jentzel is a hero, not a "file" – a detail that the Criminal Injuries Compensation Board bureaucracy appears to have missed.

Pained by the Process: William Jentzel's Story

39 *Four years ago, when he was 21 years old, William Jentzel happened upon four men who were attacking another young man. He could have walked by or called the authorities, but William decided to help. It proved a fateful decision. The four men turned their attention away from their original victim and beat William savagely, kicking him and punching him, smashing his nose and knocking him unconscious. He was in a coma for eight days.*

40 *William's physical recovery has been arduous and incomplete. He has had four brain surgeries and experienced post-operative complications. He has been left*

with cognitive deficits, a damaged left vocal cord, no sense of taste or smell and diminished strength and co-ordination in his right hand. His road to justice has also been arduous and incomplete: Incomplete because, despite a $10,000 reward offer, his assailants have never been identified; arduous because of the way the Criminal Injuries Compensation Board treated him.

41 *On Aug. 18, 2003, when it became apparent that William would require extensive psychotherapy to assist him in recovering, his father applied to the Criminal Injuries Compensation Board for compensation for his son. A month later, on Sept. 16, 2003, the father called the Board and asked for interim funding to help pay for the therapy. The elder Mr. Jentzel explained that he was calling because his son was still having difficulty with information. The staff member he spoke to told Mr. Jentzel that the interim application would have to be made separately from his original claim, and filed by his son directly. That was the rule.*

42 *Meanwhile, the father's original claim sat idle at the Criminal Injuries Compensation Board. Nothing was done for five months to review it. Then, on Jan. 15, 2004, a letter was sent to William, saying the application for compensation his father had filed was deficient and could not be processed. There were two problems: First, the claim form contained irrelevant information; since the attack had occurred on the street, any details relating to events at the hospital would have to be deleted from the description of the incident. Second, since he was an adult, William would have to substitute his name for his father's on the application form. The letter advised William that his father could be designated to receive information about the claim, but the father could not change any information or make any requests on the son's behalf.*

43 *Two weeks later, on Feb. 2, 2004, the father wrote again, once more requesting interim funding for William's therapy. That letter was followed by a signed authorization from William, allowing the release of information to his father. The response from the Criminal Injuries Compensation Board was curt and troubling. It advised William that if he did not correct his application within the next 60 days, the Board would assume that he had decided not to apply for compensation.*

44 *Prompted by this threat, William's father called the Criminal Injuries Compensation Board. The staff member he reached told him that the Board was not authorized to speak to him about his adult son's claim. He told her of the signed authorization, which she then found. So satisfied, she explained to the father that the application was still incomplete because a page of the claim form was missing. The father asked her to send a new form. She told him she could*

not because, while the authorization form permitted him to receive information on his son's behalf, he was not authorized to make "special" requests.

45 *Six days later, despite the challenges he was facing, William contacted the Board and repeated his father's request for a new form. A duplicate page was sent to him the next day and the necessary information was sent to the Board. William also sent a letter asking for interim assistance to help fund his therapy. Over the next few weeks, his request for interim assistance went in one direction while his main application for compensation went another.*

46 *Nothing was heard on his interim assistance application for two months until, in April 2004, he was sent new forms, to be filled out by his therapist. The Jentzels returned the forms with dispatch. Yet it took another three months before William's request was sent to the Board's Chair for consideration. And then it took another month, until Aug. 19, 2004, before a decision was made. A full 11 months had elapsed since his father had first asked for help for William, and six months since William had managed to make his own request for interim assistance.*

47 *The main application for compensation sat for a month after William supplied the missing page. On March 30, 2004, the Criminal Injuries Compensation Board sent a Police Questionnaire to the local police. Six weeks later, on May 10, 2004, the Board received the completed questionnaire confirming that William was a victim of crime, had not contributed to his own injuries, and had co-operated with police. It then took the Board until June 16, 2004, four months after William supplied the missing page and more than a month after the Police Questionnaire was received, to send a series of documents to William to be filled out by medical professionals, a process that lasted several weeks. As a result, it was not until near the end of November 2005 that a documentary hearing was scheduled for mid-January 2006. But that did not end the delay.*

48 *A decision was not rendered until April 10, 2006, when it was forwarded to the Chair for review. Even after an order was made providing for a $20,000 payment for William's pain and suffering and $2,349 for lost income, the Board's Financial Unit did not receive direction to issue payment until July 19, 2006. Five days later, one month short of three years after his father first approached the Criminal Injuries Compensation Board for help, William's cheque was finally issued.*

49 The citizens of Ontario should be proud that our Government was prepared to pay more than $20,000 to help William Jentzel. What we cannot be proud of is the

runaround he and his father were given, the insensitivity that was shown to their plight, and the delay they experienced in trying to obtain what William was entitled to by law.

50 This one sad story shows the Board rejecting a form because it contained too much information instead of simply ignoring what was superfluous. It reveals a "not my job" attitude that kept a staff member from checking to see if William's application had similar problems to those the Board identified in his interim claim. Then there is the mindless refusal to send a page known to be missing from the son's application because the father, not the son, had asked for it; the delays in sending out documents; the inexplicable practice of making serial requests for documents instead of getting all steps underway at once; and the dead time as the applications sat moribund – pending completion, pending a decision, and then even after the decision.

51 This case shows how a family, already suffering the effects of senseless brutality, was greeted by its own government agency not with can-do compassion but with a maze of technicality, much of it trivial. It is true that the Jentzels were ultimately helped, but not before they were aggravated and frustrated by an institution so accustomed to invoking procedural impediments that it would treat them as a file instead of as people in need.

52 While the Jentzels' story is deeply disturbing, it is far from unique. And the Office of the Attorney General of Ontario knows this full well. The Criminal Injuries Compensation Board's bureaucratic inefficiencies have long been on display. The Board's obstructionist practices are the legacy of chronic underfunding and an unwillingness or inability on the part of the Province of Ontario to face the difficult issues.

53 As the Jentzels' story painfully shows, crime victims are left to pay the price. That is why this report contains so many recommendations. The Criminal Injuries Compensation Board simply cannot be allowed to continue to add insult to injury and the Province of Ontario can no longer stand frozen at the crossroads while people suffer.

Investigative Process

54 On Aug. 22, 2006, I notified the Criminal Injuries Compensation Board of my intent to pursue a systemic investigation into complaints concerning its treatment of victims of crime. My Office had been receiving an increasing number of

complaints about the Board's treatment of victims. Many complained about facing heavy demands for paperwork and lengthy administrative delays before a decision or award was received. Some victims also said they felt they were revictimized by the painfully difficult compensation process and were unable to obtain closure.

55 Our investigation was carried out by a nine-person Special Ombudsman Response Team (SORT). Both the Criminal Injuries Compensation Board and the Ministry of the Attorney General co-operated fully with our investigators. We received and reviewed 39 bankers' boxes of documents from the Criminal Injuries Compensation Board and the Ministry. In addition, we reviewed 21 Criminal Injuries Compensation Board application files. In total, our investigators examined more than 15,000 documents.

56 Formal interviews were conducted with 14 provincial government officials, including senior managers, staff and members from the Criminal Injuries Compensation Board, and the Ministry of the Attorney General's Ontario Victim Services Secretariat, Policy Division and Office for Victims of Crime. We interviewed the Senior Counsel and Director of the Policy Centre for Victim Issues, Justice Canada. We also conducted 28 in-depth interviews with victims and their families as well as 21 interviews of stakeholder groups, advocates and professionals working with victims of crime, including the Canadian Resource Centre for Victims of Crime, Canadian Centre for Abuse Awareness, the Canadian Crime Victim Foundation, the Victims of Violence Canadian Centre for Missing Children, and five legal clinics. The majority of interviews were conducted face-to-face and formally tape-recorded and transcribed. A number of written submissions from interested parties were also received and reviewed. SORT members also canvassed other jurisdictions regarding their practices relating to compensation for victims of crime.

57 I announced my investigation publicly on Aug. 23, 2006. To date, we have received 153 complaints about the Criminal Injuries Compensation Board in 2006-07. Most of those who complained did so after learning of my investigation.

58 On Aug. 23, 2006, Ontario's Attorney General, Michael Bryant, announced that he welcomed my investigation. He noted:

> We are proud of the record of the CICB, but its ability to serve victims of crime in the way they deserve needs to be updated.

I am pleased that the Attorney General has welcomed our examination of this important institution. I am also pleased to see that the Government will be receptive to suggestions for improvement. I mean no disrespect to the Attorney General when I say, however, that given what we have seen, "updated" is a euphemism. The problem is not that the practices of the Criminal Injuries Compensation Board are from another age. The problem is that the age of government neglect has to end. Only decisive and courageous initiatives can make things better.

59 Before I chronicle the sorry state of affairs that must so urgently be addressed, I want to demonstrate two things – the importance of the commitments that the Province of Ontario has made to support victims of crime, and the true extent of the promise to victims contained in the *Compensation for Victims of Crime Act*. I will do this by describing the terms of these commitments and by showing how Ontario's compensation scheme compares to those in other countries and provinces. These promises have set the bar high – so high, in fact, that the low level of performance that is achieved is all the more discreditable.

The Criminal Injuries Compensation Scheme: Promises Made

The March of Victims' Rights

60 Traditionally, our legal and political system was devoted to the premise that a crime is an offence against the state that is prosecuted not on behalf of the victim, but in the broader public interest. In its extreme form, this traditional perspective relegates victims to the simple role of witnesses, having no standing and no rights arising from their personal loss. In recent times, disregard for the special suffering of crime victims within both the legal and political systems has left many of them feeling alienated, unsupported, and even abused. It is a perspective that the public will no longer tolerate.

61 In the last 20 years, a victims' rights movement has flourished, not just in Canada but internationally. In November 1985, the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power[1] was issued on

[1] United Nations General Assembly, 96th Plenary Meeting, 1985, Resolution 40/34, annex

behalf of the international community. It emphasized that victims of crime should be treated with compassion and their dignity should be respected. One of the principles set out in the Declaration is that states should endeavour to provide financial compensation to victims when it is not fully available from the offender or other sources.

62 In 1988, a Canadian Statement of Basic Principles of Justice for Victims of Crime[2] was promulgated, echoing many of the principles outlined in the United Nations Declaration. Although it does not address compensation specifically, the Canadian statement (revised in 2003) calls for victims of crime to be treated with courtesy, compassion and respect, and for all reasonable measures to be taken to minimize inconvenience to them.

63 In spite of limits imposed by Canada's complex federal system, Ontario made important commitments to support victims of crime, many years before the UN declaration. As long ago as 1967, the *Law Enforcement Compensation Act*[3] provided financial support for peace officers, police officers and firefighters who were injured because of criminal acts. In 1971, the *Compensation for Victims of Crime Act*[4] came into force, providing for awards of compensation to any victim of a violent crime occurring in Ontario – and creating the Criminal Injuries Compensation Board.

64 In 1987, in the wake of the UN Declaration, Ontario undertook another important initiative. It implemented a Victim/Witness Assistance Program which serves vulnerable victims, particularly those affected by domestic violence, child abuse and sexual assault. The program operates in more than 50 court centres across the province. The same year, Victim Crisis Assistance and Referral Services were created, providing immediate on-site services to victims of crime or disaster, 24 hours a day in 40 communities.

65 On June 11, 1996, Ontario proclaimed the *Victims' Bill of Rights*[5]. Although largely a statement of principle rather than a rights document per se, the Bill supports and recognizes the needs and entitlements of victims of crime. Both in its preamble and provisions, it promises that victims of crime will be treated by justice system officials with courtesy, compassion and respect for their personal dignity and privacy. As part of that promise, the Bill also pledges that justice

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[2] Department of Justice Canada (1 October 2003) online: http://www.justice.gc.ca/en/ps/voc/publications/03/basic_prin.html

[3] *Law Enforcement Compensation Act*, 1967, S.O. 1967, c.45

[4] *The Compensation for Victims of Crime Act*, 1971, S.O. 1971, c.51

[5] *Victims' Bill of Rights*, 1995, S.O. 1995, c.6

officials will ensure that victims have access to information about the *Compensation for Victims of Crime Act*.

66 In 1996, the Victim Support Line was also established. It is a provincewide, toll-free service that provides information on the criminal justice system and referrals to local community services. A Victim Notification System also provides victims with automated notification about changes in an offender's status, including transfers, upcoming parole hearings and scheduled release.

67 In 1998, the Office for Victims of Crime was created. It is an external advisory body that provides input on the development, implementation and maintenance of provincial services for victims of crime and ensures that programs and services reflect the principles of Ontario's *Victims' Bill of Rights*. That same year, SupportLink was established. It offers safety planning and wireless telephones to victims at high risk of sexual assault, domestic violence, and stalking.

68 In June of 2000, the Ministry of the Attorney General launched the Victims' Justice Action Plan. Its goal is "to develop an integrated justice-sector service that is responsive to the needs of crime victims and community service providers." The multi-year plan includes guiding service expansion into unserviced and under-serviced areas throughout the province and improving victim services through integration and co-ordination.

69 It can be seen, then, that Ontario has long appreciated the need to assist victims of crime. It is equally obvious that this Province has repeatedly made important promises to victims, first among them being that we in Ontario will stand with victims of violent crime and demonstrate our solidarity with them by contributing financial support.

An Impressive Promise: The Criminal Injuries Compensation Plan

70 Ontario's impressive promise of compensation is contained in the *Compensation for Victims of Crime Act*. Individuals may be eligible for compensation if they:

- have been injured as a result of a crime of violence committed in Ontario;
- were injured while trying to prevent a crime or while helping a police officer make an arrest;

- are responsible for the care of a victim of crime and have suffered a loss of income or had expenses as a result of the victim's injury or death; or

- are the dependent of a deceased victim of violent crime.[6]

71 Under our scheme, compensation may be awarded for:

- expenses actually and reasonably incurred or to be incurred as a result of the victim's injury or death;

- pecuniary loss incurred by the victim as a result of total or partial disability affecting the victim's capacity for work;

- pecuniary loss incurred by dependents as a result of the victim's death;

- pain and suffering;

- support of a child born as a result of rape; and

- other pecuniary loss resulting from the victim's injury and any expense that, in the opinion of the Board, it is reasonable to incur.[7]

Ontario also permits interim compensation for support or medical and funeral expenses, where the applicant will probably be awarded compensation.[8]

72 The Criminal Injuries Compensation Board adjudicates who is eligible for compensation and how much they should be awarded. The Board is an independent administrative tribunal currently composed of a Chair, a full-time Vice Chair, a part-time Vice Chair and 14 part-time members, all of whom are appointed by Cabinet. Procedurally, applicants must apply for compensation within two years of injury or death, or within such longer time as the Board may allow.[9] When the matter is ready to proceed, the Board will adjudicate the applicant's claim, either by conducting oral or written hearings (where documents are simply reviewed by Board members) after providing at least 10 days' notice to the applicant, to the Attorney General, to the offender if it is practicable, and to

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[6] Section 5, *Compensation for Victims of Crime Act*
[7] Section 7(1), *Compensation for Victims of Crime Act*
[8] Section 14(1), *Compensation for Victims of Crime Act*
[9] Section 6, *Compensation for Victims of Crime Act*. The time limit was extended from one to two years in 2000.

any other person who has an interest.[10] Hearings may be held by one or two members.[11]

73 It is during these hearings that the Board decides whether or not the applicant is a crime victim eligible for compensation. Board members consider whether the incident is an act of violence as described by the *Criminal Code of Canada* and whether there is enough reliable information available to support the claim. The standard of proof applied by the Board is the "balance of probabilities" as compared to the standard of "beyond a reasonable doubt" required by the criminal courts. The statute provides a shortcut to assist the Board. Proof that the accused has been convicted, and that all avenues of appeal have been exhausted, is treated as conclusive.[12] Where a prosecution is underway, the Board is given the discretion to adjourn its proceedings pending the final determination of the charges.[13] It is important to appreciate, however, that this is not the only way to establish eligible victimization. Indeed, a conviction is not even necessary before compensation is possible. A victim's eligibility for compensation can be proven in other ways.

74 An important feature of the Ontario statutory regime is that it does not preset compensation awards. Compensation is a context-based issue that the Board is to adjudicate, subject only to statutory caps. The maximum lump sum that may be awarded is $25,000 and the maximum periodic payment cannot exceed $1,000 per month. If both lump sum and periodic payments are awarded, the lump sum cannot exceed $12,500. The Act also provides that the total amount awarded to all applicants as a result of one crime cannot exceed $150,000 in lump sum payments, or $365,000 in the case of periodic payments.[14] Within these limits, the Board is to determine appropriate levels of compensation with regard to all of the circumstances of the claim. Compensation awards can be affected adversely if the victim contributed directly or indirectly to his own death or injury,[15] failed to report an offence promptly or failed to co-operate with the police.[16] While general need is not a relevant factor in determining awards, the Board may

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[10] Section 9, *Compensation for Victims of Crime Act*

[11] Section 8, *Compensation for Victims of Crime Act*. According to section 10, if a decision is made by a single member, the applicant or the Minister can require that another hearing be held by at least two members.

[12] Section 11, *Compensation for Victims of Crime Act*

[13] Section 16, *Compensation for Victims of Crime Act*

[14] Section 19, *Compensation for Victims of Crime Act*. The maximum periodic (monthly) awards for permanent injury were increased from $250,000 to $365,000 as a result of legislative amendment in 2000.

[15] Section 17(1), *Compensation for Victims of Crime Act*

[16] Section 17(2), *Compensation for Victims of Crime Act*

consider any benefit, compensation or indemnity paid or payable to the victim, except social assistance.[17] The Board is empowered to vary its awards, and, if it makes a legal error, its decisions can be appealed to the Ontario Superior Court of Justice (Divisional Court).[18]

How Ontario's Promise Measures Up

75 Victim compensation varies widely between countries and even within Canada. While every province except Newfoundland and Labrador[19] provides some compensation for victims of violent crime, there are significant differences. Comparatively, the Ontario victim compensation scheme is impressive – on paper.

76 Ontario is the only province to use an independent adjudicative board to determine initial awards. All others employ more summary administrative review processes. For instance, in Alberta, regulations list specific amounts of compensation available for specific injuries, which vary according to severity.

77 Ontario also fares well among Canadian programs in terms of the losses it will compensate. It is one of six provinces providing for lost earnings, one of eight that will cover funeral expenses, one of seven that will contribute to medical expenses or that will fund counselling. It is also one of seven that will provide interim compensation, and one of only three that provide compensation for pain and suffering.

78 Similarly, Ontario does well in terms of how much it is willing to pay victims, not only within Canada but internationally. While the United Kingdom will give awards of up to 500,000 pounds, Ontario has the highest maximum payments in this country. In Alberta, the maximum award for up to three injuries is $110,000. Manitoba will pay only up to $100,000. In British Columbia the maximum is half that – $50,000 – the same amount Texas will ordinarily pay in US dollars[20] and the Australians will pay in Australian dollars. Saskatchewan offers up to $25,000, Prince Edward Island $15,000, New Brunswick $5,000, and Nova Scotia tops out at a mere $2,000, which can be spent only on counselling.

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[17] Section 17(3), *Compensation for Victims of Crime Act*
[18] Section 23 and 25, *Compensation for Victims of Crime Act*
[19] Newfoundland and Labrador discontinued its program in 1993.
[20] Texas will pay more for catastrophic injuries.

79 Without question, the promises Ontario makes are generous ones. Our province's problem does not lie in the quality of the promises made, but in how they are kept given the expectations that have been created, and in staying true to the underlying philosophy of the program – to show support and compassion for victims of violent crime. The problems begin with the overall administrative structure for the plan, and culminate where they often do – with money.

The Problems with the Promise

Structural Shortcomings

80 The Criminal Injuries Compensation Board, which exists as a corporation and is to sit as an independent administrative tribunal, was created by the *Compensation for Victims of Crime Act*. Its members are appointed by Cabinet. In keeping with its independent design, it is not a program of the Ministry of the Attorney General. While the Board's Chair reports directly to the Attorney General, it is the Chair who is responsible for the general supervision and conduct of the Board's affairs. However, the Board's Chief Administrative Officer, who is responsible for managing 40 non-adjudicative Ontario Public Service staff, reports through the Ministry of the Attorney General's Ontario Victim Services Secretariat.

81 It would be possible to operate in this way provided the independence of the adjudicators was respected and a protocol put into place to ensure the administration meets the needs of the adjudicators. Unfortunately, my investigation revealed that this bifurcated reporting structure has hampered information sharing and given rise to tension between the Criminal Injuries Compensation Board and Ministry officials. This tension is one of the root causes of the inertia that has left the system so enfeebled. In fact, the inability of the Board and Ministry to get on the same page is so profound that there has been no Memorandum of Understanding between the Criminal Injuries Compensation Board and the Ministry of the Attorney General since 1994. Draft memoranda have been floating back and forth between the Board and the Ministry for years, covering such areas as operational, administrative, financial, auditing, program development, evaluation and reporting relationships and arrangements. During this investigation, we found unsigned agreements dated 1999, 2001 and 2004. The Chair advised that she prepared five draft Memoranda of Understanding documents, and even delivered one into a Minister's hand, but the relationship between the organizations has remained informal and ad hoc, failing to provide the kind of commitment that is necessary to ensure the well-being of the Board.

82 The Ministry knows this is a shortcoming. In a June 9, 2005 Ministry e-mail, it is noted that the failure to have a Memorandum of Understanding with the Board violated Management Board Secretariat's Agency Establishment and Accountability Directive. The suggestion is made that the

> Ministry may be vulnerable to criticism by the Ombudsman and PO [Premier's Office], should what we have learned about the CICB's current status and practices get out and there is little requiring the Board to adhere to certain standards of reporting and performance.

83 That concern was prescient. Promises cannot be kept without commitments, and in recent years the Ministry has not been prepared to make any firm commitment to the Board, even though it is mandated by law to provide compensation awards. This lack of commitment has left the Board too weak to perform its legal function well. It seems clear from my investigation that the Board has not been given the commitment needed because it has been increasingly viewed as a misfit with the Ministry's new vision for victims' services. In effect, by not giving the Board the support it requires, the Ministry is undermining the very independence that the law assures.

The Costs of the Promise: Funding the Criminal Injuries Compensation Board

84 Claims made to the Criminal Injuries Compensation Board have increased in complexity and number in recent years. Yet whereas it once had 25 members, the Board now has 14. Until a recent increase in the per diem payment to part-time Board members, it was, according to the Chair, difficult to recruit them at all. In a 1996 Ombudsman investigation, we were told by the Board that in November 1995, because of the funding pressure it was under, the Board chose to reduce its administrative costs by ceasing to assist victims in gathering information to complete their applications. The result, which our current investigation revealed in painful detail, is that many applications, no doubt meritorious, founder and fail as victims are left without the assistance they need to cope with the complex compensation process.

85 The Board struggles to this day, understaffed and with an antiquated case management system. It has failed to secure funding for various projects that it has demonstrated to the Ministry to be necessary. In a letter dated March 17, 2004,

for example, the Chair of the Board complained that she had not received any response to a December 2003 request for staffing vacancies. The letter suggested:

> [S]erious reduction in services as a result of inadequate budget allocation will be seen as the Board being poorly managed and ineffective, which would reflect badly on the Board and Ministry.

86 More recently, the new Chief Administrative Officer was concerned that the Board's application forms were difficult to understand and offensive to victims. These forms had been the subject of numerous complaints. The most disturbing objected to the pointless exercise of having medical practitioners draw the location of their injuries on a diagram of a body. One woman, whose daughter had been decapitated, was particularly distressed by this form. Not only were the documents in need of revision, the Board had no website and the monthly statistics package needed to be improved. Yet the Ministry refused to fund any of this. To its credit, the Board, after consultation with victims' groups and stakeholders, moved ahead without funds to make some of these things happen. Application forms were revised in December 2006. The Board even saved $15,000 in printing costs by posting its last annual report on its website, which was launched in December 2005. It is distressing that the Board has had to attempt to cope in this way. It should not be left to try to shuffle its resources to ease pressure spots. The Ministry's failure to fund consigns the Board to perpetual inefficiency.

87 Yet administrative inefficiency is not the biggest problem that parsimony poses. The greater damage is to the independence of the Board and the integrity of its decisions, as well as to the culture within the Criminal Injuries Compensation Board. Under the *Compensation for Victims of Crime Act*, compensation awards are supposed to be determined according to Board members' discretion, based on the circumstances of each case. The Board is to make those determinations as an independent adjudicative body. But the way it is funded makes this putatively "independent" body uncommonly dependent on the priorities of the government of the day. This is because, unlike most administrative tribunals, the Criminal Injuries Compensation Board not only orders compensation but is also responsible for paying for it. It must take any awards it makes out of its own budget. This permits the Ministry of the Attorney General to influence both the size and timing of awards by providing a budget that limits what the Board can do. The Board is placed in the untenable position of trying to manage a system of discretionary awards while still trying to come within a set fiscal envelope.

88 This inappropriate government control is not just exerted passively through chronic underfunding. The Ministry has also at times interfered openly with the independence of the Board by directing it to delay its awards for budgetary reasons. As a result, delay has been used by the Ministry as an overt strategy of fiscal control.

89 This has had a domino effect. The example the Ministry sets, coupled with the impossibility of the Criminal Injuries Compensation Board properly fulfilling its statutory role with the funds at its disposal, has ensured a culture of inefficiency and delay within the Board itself. Like a bad debtor finding ways to postpone the day of reckoning, it has had to choose delay over expedition and to compromise its duty toward victims.

Finding the Money

90 From 1973 to 1992, the federal government contributed directly to the compensation of victims of crime in Ontario. This practice ended with the creation of victim fine surcharges under the *Criminal Code of Canada*. In simple terms, victim fine surcharges generate revenue from offenders, who are obliged on conviction to pay a fine set at designated rates (unless it is waived by the trial judge). Ontario's *Provincial Offences Act* provides for a similar surcharge on all provincially levied fines except parking violations. In 1994, Ontario established a Victim Justice Fund to receive victim fine surcharge money. While three provinces fund their victim compensation programs using victim fine surcharges, Section 27 of Ontario's *Compensation for Victims of Crime Act*, which predates the victim fine surcharge, provides that any compensation ordered by the Criminal Injuries Compensation Board is to be "paid out of the money appropriated therefore by the Legislature." Hence, the Criminal Injuries Compensation Board is funded out of the Consolidated Revenue Fund.

91 In Ontario, the practice has evolved of treating the Victim Justice Fund as exclusively for existing and enhanced services for victims of crime. This has been inexplicably interpreted to mean projects other than the Criminal Injuries Compensation Board. In recent years, the Ministry of the Attorney General has used the Fund to support a variety of services and programs. In 2004-2005, $7 million was allocated from the Fund to 71 organizations for victims' programs and services. In addition, $1.9 million was provided for existing programs and $1.6 million for 18 programs and services that support victims of sexual assault. Still, the Fund is flush. The revenue from fine surcharges averages between $34

million and $37 million each year. Government Estimates and Public Accounts records indicate that a substantial surplus has accumulated in the Victim Justice Fund over time. For each of the 2004/2005 and 2005/2006 fiscal years, the Fund's surplus was close to $80 million. As a result, the Victim Justice Fund takes on the character of a paper promise to victims; its funds sit largely unused while the Criminal Injuries Compensation Board struggles on, choked for funds.

92 At times, the budget allocation to the Criminal Injuries Compensation Board has been adequate. From 1997 to 2000, the Board actually stayed under budget, emboldening the government of the day to reduce its budget by $1.6 million to $15.4 million. That cut proved to be too deep. The Board wound up spending $16.9 million in the year the cuts were made, requiring the Ministry to obtain special approval to use money from the Victim Justice Fund to cover the shortfall. In 2001-2002, the same thing happened. The $15.4-million budget was short of the $16.7 million expended, prompting the Ministry to begin providing the Board with $1.6 million annually as a budget supplement. Shortfalls have become a perennial problem, and the Victim Justice Fund has been the usual source of the bailout money, even though it has never been accepted by the Government as an appropriate source of hard funds for compensating crime victims.

93 The Board's shortfalls have little if anything to do with fiscal mismanagement. Since the brief surplus period at the end of the last decade, its financial needs have increased. This is in part because justice officials at all levels have worked hard to encourage the prosecution of domestic assaults and historical sexual offences (many of the claims dealt with by the Board arise out of such offences; half of the Board's caseload is the result of intimate violence). In February 2001, a court decision in *Evoy v. Ontario (Criminal Injuries Compensation Board)*[21] made such cases more expensive. It held that where a victim has been subject to a series of attacks, as is common in domestic assault cases, each attack should be treated as a separate incident, not as a group, as had been Board practice. In total, between 1998 and 2004, the workload of the Board increased by 148%. And claims have increased by another 35% in the past two years alone, in part because of new practices adopted by the Board to fulfill its obligation under the *Victims' Bill of Rights* to increase accessibility and outreach.

94 In spite of this, save for a material increase several years ago, there has been little change in the Board's fixed budget. For the past five years, its budget has hovered around $20 million; in 2002/2003 it was $20,366,800 and in 2006/2007 it was $20,305,300. A Board submission to the Ministry asserts that between 1998

[21] [2001] O.J. No. 2258 (Div. Ct.) (QL).

and 2004, its budget allocation increased a paltry 2.5% to meet the 148% increase in workload and to cope with increased operating costs. Instead of paying what is required to make the program work as advertised, the Ministry has, for budgetary reasons, used its financial control to impede this independent body from honouring its statutory mandate. A few examples:

- In February 2001, the Board was told that its transfer payment allocation had been exhausted and was warned that any award cheques it issued would bounce.

- Ministry legal advice in April 2001 suggested it was "illegal" for the Board to make awards once its budget allocation had been reached.

- In 2003 and 2004, the Board was under pressure to adopt the practice of halting the processing of awards each month so that the forecasted transfer amounts were not exceeded. The Board left awards unprocessed to carry them over into the next fiscal year.

- In March 2004, an e-mail from the Board's Registrar confirmed to the Assistant Deputy Attorney General that the instructions were to withhold processing of Board orders at year-end that would result in transfer payments exceeding the Board's allocation. By March 31, 2004, the Criminal Injuries Compensation Board had stopped 273 orders, with a value of over $2 million, from being processed.

- A Nov. 4, 2004 Ministry e-mail noted that the Board was directed in 2004/2005 to live within its approved funding envelope, and that to accomplish this, the Board had been delaying dating and signing orders. This was creating a backlog with projected costs of $5 million. From Nov. 19, 2004 to Nov. 23, 2004, e-mails between the Board and the Ministry indicate that the transfer payment pressures not paid in the current month were being reported as accruals and released for payment in the following month. This meant that in one week the Board would deplete the whole allocation for the month and over the next three weeks the payments would continue to accumulate. As a result, the time between a victim's hearing and the awarding of compensation increased from 16 weeks to 20 weeks or more.

- Information obtained during our investigation suggests that the release of decisions may still be held back in order to manage pressures at the end of the fiscal year.

95 Not surprisingly, putting the Board in the position where it has to try to outrun financial pressure has not solved the problem. It has only resulted in a snowball effect. By 2004/2005, $6.5 million had to be directed from the Victim Justice Fund to cover the Board's anticipated overspending.[22] This practice not only delays the inevitable, it also jeopardizes the independence of the Board.

96 To the extent that imposing a fixed budgetary envelope on the Criminal Injuries Compensation Board imposes pressure on it to keep awards in line with allocated funds, it is a pressure that is being exerted contrary to law. In 1999, in a case called *Myers v. Ontario (Criminal Injuries Compensation Board)*[23], a victim challenged a $5,000 limit that Board practice had imposed on therapy awards. Counsel for the Attorney General, representing the Board, tried to justify the Board's practice by explaining that claims for compensation were considered in light of the total number of claims and the annual amount made available to the Board by the Province. The court found that it is contrary to law for the Board to calculate or adjust an award in this way. The court made it clear that the value of an award "is to be calculated without reference to any 'budget' real or imagined."

97 Dividing a pie that can get smaller or larger as the government of the day dictates is not the system that the *Compensation for Victims of Crime Act* established. While there is no evidence that the Ministry has ever tried to influence a decision in any individual compensation claim, the Ministry is aware that the financial pressure it exerts could compromise the Board's independence and is highly questionable. On March 17, 2004, the Chair of the Board wrote to the Attorney General, noting that withholding payments could be a serious embarrassment for the Board and that there were over $1.5 million in orders awaiting a date to be valid. She also wrote:

> I agreed to this way of managing CICB's pressure in light of the broad fiscal management issues of the day, even though I believe my agreement allowed OVSS [Ontario Victim Services Secretariat] to interfere with the Board's independence as a quasi-judicial administrative tribunal so that OVSS may meet its own budgetary requirements. Upon reflection, I believe my concurrence with this course of action is in direct conflict with my responsibility as Chair of the Board, and a disservice to victims.

98 On Nov. 22 2004, it is acknowledged in a Ministry e-mail "that the current approach of sitting on decisions carries with it some legal risks." Of course it

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[22] In the end, the Board ended up spending only $5.5 million of this allocation.
[23] (1999), 126 O.A.C. 326 (Div. Ct.).

does, and it also assures that victims will not be treated fairly and as promised. During my Office's investigation, a Board official assured us that orders could still be postponed for financial reasons, but only for two weeks to a month at fiscal year-end. While this might seem inconsequential to some, to a victim of violent crime in desperate need, or to one simply awaiting validation and closure, it can feel like an eternity. Victims of violent crime should not have to suffer because the Board has not been provided with sufficient funding.

99 The Board has, however, become acculturated to delay, and the implications of this go far beyond holding back awards for several weeks. Over the last five years, the Criminal Injuries Compensation Board has received between 4,000 and 5,000 new claims a year. It has adjudicated only 2,500 claims per year. It takes no great insight to recognize that if the Criminal Injuries Compensation Board ever truly tried to process applications promptly, emergency infusions from the Victim Justice Fund would not save it. It would collapse. When one reviews the history of the Board, one finds that case management delay has essentially become standard operating procedure.

The Scope and Impact of Delay

Hurry up and Wait for Never: Jeffrey Downes' Story

100 *On Aug. 11, 2001, at 7:45 in the evening, 43-year-old Jeffrey Downes was assaulted while watering flowers outside a housing complex. His enraged assailant struck him eight times. Jeffrey's eyes were blackened and his right arm, broken as he tried to protect himself when his attacker struck him with a heavy wooden stool, was smashed so badly that it would not heal, necessitating surgery. As the criminal case slowly meandered through the courts, two investigators suggested to Mr. Downes that he apply for compensation. Their good intentions sent him on a long and pointless 40-month path of delay and brought his pained family nothing but frustration.*

101 *Mr. Downes' application was submitted on May 5, 2003. After a month, the Board got around to sending out a Police Questionnaire for completion. It was filled out by the investigating officer on June 27, 2003. That form certified that Jeffrey Downes had been the victim of a crime of violence, that his injuries did not result from his own conduct, that he was co-operative, and that the offender had been charged with aggravated assault and assault causing bodily harm.*

102 *Only after it obtained the Police Questionnaire did the Board, on Aug. 8, 2003, send Mr. Downes a letter requesting that he obtain medical reports. By November 2003, the medical reports had been delivered. Still, the Board was not ready to move. In its August letter, the Board had advised Mr. Downes that if criminal charges in the case were proceeding, it would await the outcome of the attacker's trial before arranging a compensation hearing. And there the matter sat, waiting for confirmation of something that was never in dispute – that Jeffrey Downes was a victim of violent crime.*

103 *Finally, the offender was sentenced on May 17, 2004. But the waiting had only begun. The Board would not move forward without formal proof of conviction, the criminal indictment. There is no precise indication in the Board files of anything having been done to secure this last, pointless document, until almost two years later, other than three cryptic notes that say "disposition follow-up." Finally, on Jan. 16, 2006 a fax was sent to the office of the court where the conviction occurred. Even though the court office gave immediate oral confirmation of the conviction, the Board waited four more months for the document to be delivered. Only then was a written hearing scheduled, for Aug. 3, 2006, more than three years after Mr. Downes' application. That hearing never took place. Tragically, Jeffrey Downes died of a heart attack while waiting for compensation. His file was unceremoniously closed.*

104 *It would be bad enough if the story ended there, but it does not. On Oct. 4, 2006, after being contacted by the Downes' Member of Provincial Parliament, the Chair of the Criminal Injuries Compensation Board wrote to Jeffrey's father, explaining that the* Compensation for Victims of Crime Act *does not permit awards to bereaved families if the victim's death was not directly caused by crime. However, the letter pointed out that Mr. Downes' case was actually treated with greater dispatch than usual.*[24]

105 The caseload of the Criminal Injuries Compensation Board is crushing. As of July 26, 2006, there were 9,640 cases in progress. Right now it has what it refers to as 25,000 "virtual" claims – cases where packages have been sent out to applicants but not returned; cases that can at any time become actual rather than virtual. There is also an imposing inventory of incomplete files that the Board has closed "administratively." The Board has no statutory authority to dismiss stale claims, so it closes them subject to reactivation. Not surprisingly in the face of a

[24] The letter stated: "Generally, a hearing date will be provided within six months of an application being placed on the ready-to-be-heard list. In the circumstances of Jeffrey Downes' application, the hearing was scheduled well before the end of the six-month time frame."

caseload such as this, inadequate funding has contributed to chronic delay. In 2005/2006, the average length of time it took the Criminal Injuries Compensation Board to process a claim was an astounding three years.

106 My Office has been fielding delay complaints about the Board for years. In 1993, we investigated two cases where delay occurred for the very reasons that have led to the present crisis – hearings were cancelled because the Board's funds for operating expenses were depleted before the end of the fiscal year. By 1996, we had investigated six more complaints about delay, this time caused by an increased caseload that was met with a 30% reduction in funding. The following year, 1997, the Board, using the buzzwords "doing more with less," cut its backlog in half and came $3 million under budget. In effect, less was being done for victims for less money; that same year, the Wood Task Force on Agencies, Boards and Commissions considered the Criminal Injuries Compensation Board to be a troubled agency, and called for reforms to "serve the needs of the victims more fairly, quickly and directly." In 1998, another investigation by this Office found that the Board was overburdened and frustrated by its perennial administrative underfunding: six compensation analysts were attempting to process more than 3,000 applications. In a January 1999 investigation, reasons given for delay included technical difficulties in a computerized case management system and a shortage of adjudicators.

107 Even leaving aside the impact on victims for a moment, it is well understood that delay can decrease the quality of decision-making. In *Warren v. Ontario (Criminal Injuries Compensation Board)*[25], a compensation claim based on a sexual assault allegation against a physician was stayed because the judge felt the 10-year delay would leave the doctor, who had not been convicted of any offence, stigmatized by an award based on stale information.

108 What is most disconcerting is that the Board has accommodated delay institutionally, inspired to do so in no small measure by its funding crisis. There can be no more dramatic illustration of that than the officious missive sent to Jeffrey Downes' family, touting a supposedly shorter-than-normal delay – the letter is a veritable monument to how far the compensation scheme has strayed from serving those it was intended to benefit. What Jeffrey Downes' family deserved was an unreserved apology, not statistics on how well his case was handled compared to the Board's embarrassing track record.

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[25] (2005), 262 D.L.R. (4th) 144 (Div. Ct.).

109 Notably, the Board resists referring to its cases in progress as a "backlog" – it prefers to see them as an "inventory." Soft language for harsh realities can be comforting, but it is self-delusion. It is clear that the Board is in crisis and has been for many years. The most poignant measure of that crisis is that it can only manage to deal with about half of its active claims. Its survival depends on delay, administrative hurdles, and on entitled victims not knowing enough or not being motivated enough to apply. As the Jeffrey Downes case lays bare, the Board has constructed a fortress of rules and procedures, and its file management practices have evolved into a series of gatekeeping functions. It has chosen to befriend bureaucracy, delay and mindless formalism rather than fight them – and in the process is harming those it should be nurturing and supporting.

Getting Through the Gates

When Support Becomes Suspicion: Aurelio Almeida's Story

110 *On Aug. 29, 2001, five-year old Naiomi Almeida was stolen from the sanctity of her family home, raped and murdered. Her father, Aurelio, was staggered by shock and grief. Unable to return to his job as a cement truck driver, he was left to support himself and his nine-year old son on Employment Insurance disability benefits. His savings quickly withered. Still, he felt he had to change homes to protect his son, whose sense of refuge had been violated. So Aurelio Almeida's cost of living increased while his income shrunk. Mr. Almeida asked the Criminal Injuries Compensation Board for help on the recommendation of a kindly police officer who had heard of his plight. He had no way of knowing that instead of finding stalwart support, he would be embarking on an emotionally gruelling voyage through a world of bureaucracy and frustration.*

The Almeidas' Compensation Claims: The Fast Track to Delay

111 *Mr. Almeida first contacted the Board for help in December 2001. On Jan. 11, 2002, he completed two Primary Information Forms – one for his own claim and the other on behalf of his traumatized son; the rules required separate, largely duplicate applications. On March 8, 2002, desperate and wondering why he had not heard back, he contacted the Board, telling them he and his son had little to live on and asking that their claims be expedited. But the process was just beginning. Four days later, he received two packages in the mail. The first contained standard Medical Report Forms, an Employer Form and an*

Employment Insurance Report Form. He was instructed to arrange for their completion and return them to the Board. The second package was for his son's separate claim. It enclosed Medical Report Forms that would also have to be completed. On May 1, 2002, close to two months later, another pile of forms arrived in the mail, this time a Request for Interim Compensation Form, a Financial Information Form, and another Employment Insurance Report Form. The next day, May 2, 2002, more than four months after Mr. Almeida had first asked for help, the Board sent a request to the investigating police force to fill out a Police Questionnaire that would prove he and his son were crime victims.

112 *It was at this point that Mr. Almeida's compensation claims began to receive exceptional treatment that would rescue them from the Criminal Injuries Compensation Board's three-year average delay. Three initiatives were taken to give uncommon haste to his applications: First, a staff member received permission to give his files high priority. Second, the Board decided to make an interim payment of $500 for lost income. And third, the Chair of the Board made the exceptional decision to process the claim before the criminal prosecution was over; the Board would rely on the Police Questionnaire as adequate formal proof that the Almeidas were victims of a terrible crime.*

113 *Each of these attempts to speed things up is laudable and I want to give credit where credit is due. What cannot be overlooked, however, is that it was not until two months after Mr. Almeida's desperation letter – a full four months after his initial request for help – that the file was targeted for high priority. And it was not until September – four months after the high-priority designation – that the Chair of the Board decided that the application need not wait for a final conviction to be registered by the courts.*

114 *The Board's response still appears positively lethargic to outside eyes. Indeed, after the decision to accept the Police Questionnaire, things slowed even more; one more month to set a date for an oral hearing, six more weeks for the hearing itself to arrive, and then seven more weeks for the decision to be made after the hearing had ended. But even then, after the Jan. 27, 2004 order authorizing payment to Mr. Almeida was signed, the wait was not over. The order had to go through "processing" – and there it sat, while Mr. Almeida faced an eviction notice for nonpayment of rent. On Feb. 5, 2004, two months after his oral hearing, Mr. Almeida called the Board to tell them his landlord had offered not to evict the family if Mr. Almeida could just produce a letter confirming that he was getting compensation. And what was he told when he called? Not that he and his son had been awarded $7,000 each for emotional distress. The Board employee who took the call told him the decision was not yet finalized, even though that*

same day, another Board employee was putting the cheques in the mail. Mr. Almeida got the money five days later.

The Almeidas' Funeral Expense Claim: Forms over Substance

115 *It was not until May 22, 2002 that Mr. Almeida learned that the families of murder victims are entitled to compensation for the costs of the victim's funeral. A Board employee told him this would have to be a separate claim, distinct from the two he had already filed. Even though it dealt with the same victims and the same incident, any funeral expense claim would have to take its own conveyor through the compensation factory. On June 6, 2002, Mr. Almeida was sent yet another Primary Information Form to fill out, this time in the name of Naiomi Almeida. This one, too, was marked "Priority Level," but like the compensation claims, it too was put on a slow boat to processing. Worse, that slow boat would founder on the shoals of insensitivity.*

116 *It is widely understood in the criminal justice system that having to recount things over and over is painful for most victims. Having to describe the horrid details of Naiomi's murder yet again for the funeral expense claim – even though they had already been described and validated in other documents in the Board's possession – proved too much for Mr. Almeida, so he used common sense. He inscribed this on the form:*

> *Some info asked cannot be remembered or not told to me for protecting my sanity.*
>
> *Please look at file #... it has all the information needed to fully complete this application.*
>
> *I apologize for the quickness of this report, but I still find it hard to go through all this once again.*

117 *And then he sent the form in, only to have it boomerang back a month later, with this note:*

> *Let me begin by offering my sincere condolences in the loss of your daughter. It is with sincere regret that I must inform you of our inability to proceed [with] the processing of Naiomi's claim, as further information is required. Since the enclosed forms constitute your official declaration*

> *to the Board, it is necessary that you record Naiomi's information in the highlighted sections.*

118 *Mr. Almeida was not up to complying. He was sent another set of forms on Aug. 22, 2002 by another staff member and directed to "send a brief statement providing details of incident when returning the amended form." On Oct. 24, 2002, a third Criminal Injuries Compensation Board staff member wrote to him, requesting that he return his claim forms for the funeral expenses. This time the letter was terser, threatening that:*

> *We will assume that you have decided not to apply for compensation at this time if a response is not received within the next 60 days.*

119 *With that, Mr. Almeida did his best and returned the form, but on Nov. 4, 2002, the Board advised him that a page was missing and a new form would be sent for him to complete. By this time, Mr. Almeida had received notice that the oral hearing for his earlier claim would be taking place on Dec. 4, 2002, so he decided to hand-deliver the funeral expense claim form to the panel during the hearing. That proved to be a mistake, for on Feb. 4, 2003, he received yet another letter. It opened with the standard commiseration, "Please accept my condolences for the loss of your loved one," but then threatened that the Board would assume Mr. Almeida had decided not to apply if he did not respond within 60 days. He called the Board and explained that he had submitted the form during the compensation hearing. In spite of this, a new set of claim forms for the funeral expense claim was sent to him a week later. He called again to protest that he had already handed in the documents. Four days later, he was contacted by a contrite staff member who confessed that the claim had been lost. According to Board records, the staff member at that point decided to forgo the largely superfluous form to "minimize the stress" and "verify the particulars by phone after having a new one completed by a member of this office." But that was not the end of his frustration. The worst of it was that Mr. Almeida was about to be made to feel as though he was trying to defraud the Board.*

120 *It is a tribute to Mr. Almeida's community that it raised money to assist him with the funeral expenses. He had also received help from his brother. Unfortunately, one or more Board analysts were taking note of this and apparently becoming suspicious that Mr. Almeida was trying through his funeral expense application to double-dip. In his funeral expense file, there are a number of newspaper articles about his daughter's death. In three of them, passages describing the financial support Mr. Almeida received from his community are underlined or highlighted. On March 13, 2003, a Board staff member asked Mr. Almeida whether he had an*

original receipt for the funeral expenses. Then he was questioned about whether he had used the publicly donated funds referred to in various newspaper articles to pay for his daughter's funeral expenses. Mr. Almeida explained that the donated money was intended to help him and his son with general expenses, and that he had used some of it to reimburse his brother for payments he had made on his behalf. The response he got was a caution that "the Board must be aware of all information," as though he had been trying to hide something.

121 *He was told he would have to attend another oral hearing, where he would once more have to talk about the dreadful events of Aug. 29, 2001. What likely saved him from the ordeal was that on March 19, 2003, someone at the Board noticed that it was irrelevant under Board policy whether Mr. Almeida had received financial help from community donations, it was not Board practice to consider such matters when considering funeral expense claims.[26] This having been established, the hearing could be conducted in writing. Mr. Almeida had been confronted in an accusatory manner and made to feel like a criminal, all because of a misunderstanding.*

122 *But Mr. Almeida's travails were still not over. On April 14, 2003, the Board informed him that it had misplaced the original funeral receipt. A staff member undertook to contact the funeral home to obtain the necessary information. On June 18, 2003, more than a year after he first inquired about funeral expenses, Mr. Almeida obtained reimbursement for himself and his brother. To its credit, the Board waived its usual policy at the time of restricting expenses to $6,000 and of not paying for collateral expenses such as travel, flowers and clothing. That act of generosity, however, hardly made up for the painful process that Mr. Almeida had been put through. Here is the legacy of his applications, in his own words:*

> *I had applied for Criminal Injuries Compensation board...a weight lifted from my shoulders knowing we would not drown in the waters trying to keep afloat financially because of what this monster did to us... At first it was filling out forms... Sixteen months later I was told about an oral hearing... so I went, only to find myself giving reasons on why they should believe that my son and I are victims and why we should be entitled to be compensated for nervous shock, loss of wages and funeral expenses...*

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[26] Indeed, the Board's Manual of Practice dated August 31, 2006 notes that its current policy is not to take into consideration money raised by public subscription when making any award.

I received a decision from the board on Monday, Feb. 10 [2003]. I was excited... My bills and rent were behind, so you could just imagine the relief I had... I grabbed that letter and opened it, only to be insulted, angry and let down... Not only did they insult my son and I with the amount, but by the phrase above it ["The Board recognizes that no amount of money can adequately compensate victims for the injustice they have suffered..."]. As if I did not know that better than they. They made me feel low by making me feel like this is just about the money...

Below that insulting phrase was a decision of an amount of $7,000 each for my son and I and a denied decision on my loss of wages.

Insulted once again and confused, I called up CICB only to be told the same phrase that was written above the amount... She furthermore explained that the decision was based on that my son and I did not sustain physical injury ... Do they not know that mental damage is so much greater than physical? Scars heal ... mental injury lasts a lifetime, especially one so damaging as ours. We are handicapped, since it has changed us for the rest of our lives, the uncontrollable emotions that we get whenever we see someone that reminds us of my little angel, every time I see a wedding on TV, grandpas playing with their grandchildren, proms, birthdays ... the list goes on and unfortunately it leaves us weak and sad...

I am angry and in shock to be treated the way that I have and still am by the courts and CIBC. These are people that are supposed to help and protect the public and victims. Just thinking that I once believed that they were there to help the public and victims makes me sick to my stomach. ***SHAME, shame on them all.***

123 I make no comment on the amount of compensation that naturally seemed so parsimonious to Mr. Almeida. That is not my place. What is clear, however, is that the well-intended but inevitably wooden words of sympathy that are transmitted in the Board's bureaucratic correspondence and impersonal phone conversations do not convey the support that the compensation regime is meant to demonstrate. Unless they are backed up by polices and practices that assist those who are at their most vulnerable, those words come across as empty, even demeaning. An institution cannot be supportive when it is fixated on forms that are designed, issued and vetted in a way that inspires failure and ensures delay.

124 I wish I could say that this insensitive, rule-obsessed and at times insulting treatment of Mr. Almeida was an aberration. Although Mr. Almeida did receive

priority treatment in some respects, the bureaucratic, rule-bound and formalistic mentality that hindered his applications is calculated. I use the term not in the sense that Board staff mischievously set out to frustrate or slow applications, but in the equally discreditable institutional sense. Rule formalism and delay have become endemic features of the Board's coping strategy – an extreme example of what I call "rulitis," a slavish adherence to rules that defies common sense and needlessly hurts people.

125 An application to the Criminal Injuries Compensation Board has become an ordeal of getting through its gates. The various stages of its claims process are not only unduly complicated, but as the Almeida saga demonstrates, they are employed as hurdles with unbecoming and often pointless rigidity. I will first describe the gates, and then explore the practices that make them so imposing, and so prone to cause delay.

Claims Service Unit – The First Gate

Applying to Apply

126 The first gate that a victim must get through involves actually obtaining a claim form. A victim must contact the Criminal Injuries Compensation Board by telephone, in writing or in person, to request an application. There is a team of nine claims services representatives who send out approximately 7,500 new claims packages per year. The first task is to convince the claims services representative that the victim meets the eligibility requirements set out in the legislation. It can only be hoped that this preliminary screening is done by erring on the side of inclusion, for it is an extremely summary process; applications should be denied only in patently obvious cases.

127 This stage accounts, on average, for two weeks of delay as, surprisingly, it takes up to **14 days** following initial contact for an application to be mailed out.

The Documentary Avalanche

128 Crime victims who make it past the initial screen are rewarded with an avalanche of documentation. The claims package includes a Primary Information Form, which requests information about the (alleged) offender, details of the incident and the injury sustained, information about the dependents of the victim, particulars of the police report, and information about anyone making an application on behalf of the victim, e.g. parent, guardian, organization or legal representative. An Authorization Form is also provided in which the victim is

asked to give consent for the release of information to the Board by various individuals – for example, treatment providers, the police, various authorities from which an applicant may receive Provincial or Federal funds (such as the Workplace Safety and Insurance Board, Revenue Canada or Canada Pension Plan), the applicant's employer and insurance companies. Other forms that may be provided depending on the initial assessment include: A Treatment Form in which the applicant is asked to list the medical doctors or specialists who provided treatment as a result of the injury; an Employment Form, to provide information about loss of income; an Expense Form to list expenses such as ambulance, hospital, medical, dental, prescription drugs, therapy and travel for treatment; a different Expense Form to claim costs of a victim's funeral; and a Benefits Form to provide information about other sources of compensation. If the two-year period for making a claim has passed, applicants are sent an Extension Request Form and must explain the reason for the late request.

129 Of course there must be minimum standards for application in order to process a claim responsibly. I am concerned, however, that this documentary avalanche is serving as a barrier to meritorious claims. I am not basing this apprehension solely on the staggering amount of information that must be filed in the plethora of forms that are required, or on the fact that forms can pose a serious challenge to lay people even when they are not traumatized by crime. I am basing it on the shared intelligence that there are 25,000 "virtual" cases in the system – those of applicants who passed the Criminal Injuries Compensation Board's initial screening as eligible, but never completed their applications. This has to tell us something profound about the burden the forms pose.

130 In the six-month period between Jan. 26, 2006 and July 26, 2006, according to a Ministry report, 2,195 claim forms were sent out and not returned. To put that in perspective, there are 4,000 to 5,000 new claims filed successfully in a year; if that six-month period can be generalized, as many applications are abandoned at the application stage as are completed. This is a sure sign that intentionally or not, the application process serves as a highly efficient instrument of attrition for applicants. If this barrier to application did not exist, the backlog would be twice as severe. An overburdened institution might welcome a 50% caseload reduction by attrition, but at what price? At the unacceptable price of discouraging an intolerably high number of claims.

131 When the completed application is returned to the Board, it will undergo a cursory review to determine if it should be expedited on the basis that the victims are over the age of 70, have a life-threatening illness, or are seeking funeral expenses or interim funding for treatment. These cases are given "priority" status. All files

not coming within these categories will sit for two to three months before they are more thoroughly reviewed by a claims services representative. At this point, the representative looks to see if the victim has followed the rules in filling out the forms, and assesses whether a claim should be given priority.

Looking for Problems

132 If the claims services representative finds information missing, such as a missing signature, details about the (alleged) offender, the injury or incident, or the date of the police report, the victim is contacted by phone or letter. We were advised by Board officials that a staggering 40% of forms are sent back at this stage because of errors – for instance, documents that are not signed and dated. It appears likely from what I have observed that many of the errors that result in rejection are not material ones, such as the rejection of William Jentzel's application because it contained "superfluous information." The Board even requires victims to sign and date documents when there is no relevant information to give. Only when the documents are corrected to the Board's satisfaction is the file forwarded to the Claims Processing Unit. Although the time spent waiting for revised forms was not identified for us, in 2005/2006 the average time for an application to reach the Claims Processing Unit was **254 days** – including the initial 14-day wait for the first wave of forms to be mailed out. Without doubt, that average is increased because documents are sent back and forth for correction because of the Board's insistence on perfection before processing.

133 A delay of that length is significant by any standards. What puts it into sharp relief is the fact that 254 days represents two-thirds of a fiscal year. What it accomplishes, then, is to postpone two-thirds of Year 1 applications to Year 2, thereby achieving short-term relief from Year 1 budget pressures.

Claims Processing Unit – The Second Gate

Sitting in "The Bin"

134 Once dispatched to the Claims Processing Unit, applications wait in a file container – known among Board employees as "The Bin" – until the Manager of the Unit assigns the file to a compensation analyst. Files remain essentially dormant while waiting in "The Bin." In some cases, where the need for a Police Questionnaire is identified, it may be requested by Board staff while the file is in "The Bin." The acquisition of Police Questionnaires often causes further delay, and as the Jeffrey Downes saga demonstrates, the wait can be a passive one.

uninterrupted by proactive efforts to get the forms done. As of August 2006, there were 690 outstanding Police Questionnaires.

135 In September 2006, there were seven analysts responsible for digging files out of "The Bin" and preparing them for hearing. These analysts carry a caseload of approximately 400 applications each and are assigned approximately 12 to 20 new applications each week. In addition, the Unit has one analyst responsible for extension requests and one analyst responsible for interim and variation requests. The Chair generally deals with the adjudication of interim and variation requests.

136 In 2005/2006, the average length of time for an application to wait in "The Bin" was **262 days**. Statistics for the period April to August 2006 show the average waiting time was 168 days and the oldest files were waiting an average of 321 days. Again, although I am not suggesting that this is its purpose, dead time in "The Bin" permits many of today's files – and some of yesterday's – to be processed in subsequent budget years.

A Second Wave of Forms

137 The compensation analysts are responsible for reviewing the forms submitted by victims and deciding what additional information will be required to support each claim. This is supposed to be done within seven days of an analyst being assigned to a file. At this point, another slew of forms is typically mailed to the applicant – for example, a Hospital Report, Medical Report, Dental Report, Physiotherapy Report, Therapy Report, Therapy Report (Sexual Assault), Other Treatment Report, Employer's Report, Revenue Canada Report, Canada Pension Plan Report, Employment Insurance Report, Workplace Safety and Insurance Board Report and Insurance Plan Report. The applicant is responsible for forwarding the reports to the appropriate individual or organization for completion. For reports the Board has requested, the Board will pay the full cost of each hospital record and up to $100 for each medical, dental and therapy report. These reports are to be mailed directly to the Board together with the invoices.

Threats and Administrative Closure

138 The compensation analysts use a bring-forward system. If the requested information is not returned within six months, a letter will be sent to the applicant advising that his or her file has been administratively closed. As the William

Jentzel story illustrates, this can be a cold and impersonal slap. If some information has been received within the six-month period, a letter is sent advising the applicant to submit the outstanding information within 90 days. If the information is not received, the file is closed administratively.

139 The claim file is not considered as ready to proceed to a hearing until all the requested forms have been submitted, the police report has been received, and, in cases where there has been a criminal proceeding, the trial has been concluded and reasons for judgment received. A compensation analyst will then prepare a written summary for the Board members who will adjudicate the claim, complete a wage loss calculation if the victim has lost income, and complete an expense statement if expenses are claimed. The analyst recommends whether the application should proceed to an oral or written hearing.

140 Compensation analysts are expected to forward between 30 and 45 files per month for hearing. In 2005/2006, applications retrieved from "The Bin" were with the Claims Processing Unit an average **334 days** before they were deemed ready for a hearing. Together with time spent in "The Bin," files languish at this stage for a staggering average of 596 days – almost two years.

Hearings Unit – the Third Gate

Waiting to be Heard

141 When the application is complete, it is placed on a "ready to be heard" list. Hearings, including those that simply involve a review of the documents by the adjudicator, are scheduled three months in advance and written notice is sent to the applicant. Oral hearings are held by a panel of two Board members and are scheduled in one of 19 locations across the province – and once or twice a year in Vancouver, British Columbia[27]. The Board's statistics for 2005/2006 show that the average time for a hearing-ready case to get to an actual hearing is **114 days**. In August 2006, this average was 107 days.

142 The (alleged) offender and witnesses may be present at an oral hearing. While under s.9(1) of the *Compensation for Victims of Crime Act*, the offender is entitled to receive notice of the hearing, the Board does not send out notices to convicted offenders. The Board also provides electronic hearings, in which the (alleged) offender may participate in the hearing by means of a conference call.

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[27] The practice of holding hearings in British Columbia developed as there is a large population of victims of historical sexual assault who have relocated to the West Coast.

143 After the hearing, the Board will prepare a written decision with reasons. When there are two Board members hearing a case, one is designated to write the decision. The Board's members work outside its offices and are not connected electronically with its computer network. This results in significant delay in the production of decisions. One member sends a decision to the Board via a computer memory stick, the Board forwards it to the other member, who reviews it and returns it to the Board. The decision is then reviewed by the Chair, printed, and sent for signature. In 2005/2006, it took an average **67 days** after the hearing for a decision to be submitted, and about **46 days** for it to be reviewed and issued as a completed order for compensation. As of September 2006, there were 200 outstanding Board orders.

Finance Unit—The Fourth Gate

Waiting to be Paid

144 After a decision finally passes through the post-hearing stage and is approved and signed, it is sent to the Finance Unit, which generates a report and sends it to a central processing site – where a cheque is produced and then returned to the Board. From April to August 2006, this step took, on average, an additional **24 days**. To appreciate the impact that this can have, we need only recall Mr. Almeida, who was facing eviction while his cheque was being processed.

145 Ultimately, the Board mails the cheque and its decision to the victim. A review of the 2005/2006 caseload determined that on average it took **251 days** to process a file from the time when it was ready to be heard to the point of mailing the decision and cheque. To recap, then, the first stage of the process (completing applications) took an average 254 days; the second (gathering documentation in preparation for a hearing) took 596 days; and the third and fourth (hearing and decision, plus processing and mailing the cheque) took an average 251 days – for a total average time of **1,101 days** per case, or about three years.

146 Imagine what Olwen Redwood thought of all this. She was severely traumatized when her life partner died after his throat was slit by an intruder. After a year, she managed to complete the Criminal Injuries Compensation Board's documentation, and phoned to check on the status of her file. She was told the Board does not even look at applications within the first year, and that her file was "at the bottom of The Bin." While "The Bin" may buy time and take pressure off the Board's budget by consigning files to limbo, one need merely think of Ms.

Redwood to appreciate that each file represents a person who is more than likely being left to wait in pain. The story of "Melissa" provides another poignant example:

Adding to the Stress: Melissa's Story

147 *In the first week of December 2000, a 47-year-old woman endured a living nightmare. Although it is not her real name, I will call her Melissa in an effort to shield her dignity, for Melissa has already had her dignity denied during a protracted ordeal. She was imprisoned in her home for an entire week by a male acquaintance who repeatedly sexually and physically assaulted her. The brutality she suffered was unrelenting. Her tormentor didn't allow her to eat or use the washroom. Over and over, she was choked, beaten and threatened with death. When he had brutalized her enough for his sick purposes, her captor dumped Melissa out of a car into a hospital parking lot. She was left with a head injury, severe bruising – particularly to her face – and several fractured ribs. The prolonged abuse she endured has left Melissa cognitively impaired, with short-term memory loss and an imbalance that has left her reliant on a cane, and she no longer has a sense of taste or smell. She remains deeply traumatized and unable to work. As a result, she has had to surrender the home she had lived in for 18 years. She is dependent on Canada Pension Plan disability benefits.*

148 *The man who did all of this to Melissa was convicted in the spring of 2002. On Oct. 25, 2002, she applied to the Criminal Injuries Compensation Board. In her fragile state, she was unable to cope with the deluge of forms. Had it not been for help available to her from a student-run legal clinic, there is no doubt that hers would have been one of the "virtual" files that never make it to adjudication. Her file is thick with documents that make it look more like a high-end tax return than the record of a plea for help. Melissa would have been defeated by the administrative burden.*

149 *To make matters worse, in collecting the information and cataloguing her experience in detail on page after page, she was made to relive her trauma. The application process was painful for her, not cathartic. And once it was finally done, a full two years after she had applied, Melissa stood at the third gate, trying to get a hearing. The stress she was feeling was profound enough that a student lawyer asked the Board to expedite the hearing. The answer to that request was, "per new guidelines, the wait time for scheduling a hearing may be from 6 to 18 months." Melissa was told she could have a hearing within six months if she travelled to a different location for it, so she did. It would be another four months*

before a decision was made, followed by three more weeks of delay while her cheque was processed. Three years to clear the hurdles, and even then, she managed only because she had help.

150 While Melissa's cheque for $19,084.62 is certainly a generous expression of support from the Criminal Injuries Compensation Board, it was muted almost to silence by the insensitivity of the institutional inertia and technicality she endured.

Under Siege: Reinforcing the Gates

151 The procedures employed by the Criminal Injuries Compensation Board are too tough for its constituency – those who have been injured by crime. Not only are the procedures too formal and challenging, the way they are administered makes them positively hurtful. There is deep irony in this, given that the Criminal Injuries Compensation Board is administered on behalf of the same Province that gave us a *Victims' Bill of Rights*, which promises courtesy, compassion and respect for crime victims. The Board's own guidelines say it "provides a fair, caring and sensitive forum for people who have been affected by crimes of violence to be heard." I do believe those who work at the Board are fair-minded, caring and sensitive people, but the way they have allowed themselves to function surely masks that for many who come to them for help. In an effort to cope with the ever-increasing demands on its resources, the Board has often had to compromise its duty to victims and to become an officious and bureaucratic institution that uses its powers to control the pace of its awards. What should be simple, non-adversarial adjudication often becomes defensive, suspicious and unduly complicated. The impressive three-year feat of delay that I have described is not accomplished by the "gates" alone; it is made possible by the way they are administered by officials and staff whose responsibility is to treat victims with sensitivity and compassion.

Waiting for a Glacier: Insisting on a Conviction

152 The Board has the power to award compensation to a victim whether or not anyone is convicted or even prosecuted for the crime. All of this makes perfect sense because the issue and standards at a criminal trial differ from those that apply to a compensation claim. At a criminal trial, the question is whether the person charged can be proven guilty beyond a reasonable doubt – and punished. The issue before the Criminal Injuries Compensation Board is whether the

applicant qualifies for compensation under the statutory scheme on the balance of probabilities.

153 Even though convictions and compensation are different issues, criminal convictions can be useful to the Board. The higher burden of proof used at a criminal trial supports the rule in Section 11 of the *Compensation for Victims of Crime Act* that enables the Board to treat a conviction as conclusive proof of a crime. What troubles me, though, is the Board's current practice of waiting for a conviction in most cases where trials are pending. Although a senior Board official we interviewed said decisions on waiting for convictions are made on a case-by-case basis, and while it appears that this was how Section 11 was administered at one time, our review of correspondence in Board files shows that waiting for convictions has become the norm. Front-line staff told us that before they dispatch files for hearing, they must wait for the final outcome of trials. While the Chair can waive this practice and send a claim to a hearing before the criminal process is complete, one staff member noted she only raises this with the Chair when specifically asked to do so by an applicant. This staff member told us that she might have five cases out of 400 a year where the matter even arises. Otherwise, the files wait for the criminal process to finish.

154 I am deeply disturbed by this. At a technical level, it is wrong in law; where an adjudicative body is given a statutory discretion, it must consider whether to use that discretion on a case-by-case basis. Applying the general practice of not even considering whether to proceed without a final criminal result is an impermissible fettering of the statutory discretion and a breach of basic administrative law principles. But the failure to meet the law's technical requirements is not what concerns me most. What truly bothers me about this practice is that it is a delay strategy. Waiting for the criminal justice system to do its work gives the Board breathing room to deal with backlogged files.

155 This is not just insensitive to the stress that delay causes for victims, it is almost invariably pointless. We were told that one of the reasons the Board considers it prudent to wait for convictions is that compensation applications may prejudice criminal trials. With respect, this is nonsense. It is inadmissible in a criminal trial for a prosecutor to prove that a compensation award has been made in a civil proceeding; the law of admissibility is designed to ensure the criminal court will not even learn about it and even if it does, the court must disregard it. In the extremely small number of criminal cases that are jury trials, the fact is that Board awards are rarely publicized, and where there is a real reason for concern, the Board can use its authority to issue publication bans. Even when (alleged) offenders testify at compensation hearings – which is rare at oral hearings and not

even possible in written ones – their answers cannot be used to incriminate them at a criminal trial. The Charter of Rights and Freedoms prevents it. It is extremely rare for courts to delay civil cases for fear of prejudicing ongoing criminal proceedings. There is nothing in law that supports the general practice the Board has adopted, and everything to suggest it is wrong.

156 We were also told that the practice of waiting for criminal results makes the Board's role easier. In fact, the Board suggested that without this practice, its hearings could take longer and might involve cross-examination of victims. I am sure this practice does simplify things for the Board, but it is not enough to justify this routine delay, particularly when one considers the glacial pace of criminal proceedings. In busy jurisdictions it can take more than a year for a minor criminal case to reach completion. If there is an appeal, it can take almost that long again to resolve. For serious crimes – cases where the victims are in the greatest pain – the criminal process tends to take longer. There are apt to be preliminary inquiries or even jury trials, and delays of a year and a half or more are common. Given that absent unusual circumstances, Board members are perfectly capable of deciding victims' eligibility for compensation without the aid of court rulings, and given that delay only causes victims additional stress, there should have to be a compelling reason before a decision is taken to await the results of a trial. The power to await convictions was not given to the Board to be used as a delay tactic for coping with overload. It is not only improper to use that power as a delay stratagem; it is incredibly insensitive. Just ask the Wambacks.

The Costs of Passing the Buck: Jonathan and Joseph Wamback's Story

157 *On June 29, 1999, 15-year-old Jonathan Wamback was beaten so badly by three young offenders that he was left on life support for 16 days. He remained hospitalized for more than seven months, and was comatose much of that time. While his condition is greatly improved today, Jonathan continues to experience cognitive and physical impairment.*

158 *In November 1999, his father, Joseph, applied to the Criminal Injuries Compensation Board. The family was seeking help with new expenses– things like wheelchairs and ambulance costs to and from hospitals during Jonathan's rehabilitation. Joseph Wamback was told by Board staff that he was not entitled to interim compensation unless he liquidated his assets. So Mr. Wamback, understanding that late is better than never, did what he had to do to prepare for an eventual Board hearing. He completed the forms and diligently collected the copious medical documents needed to support his claims. And then he waited for*

an answer, until on May 30, 2000, he received a letter advising him that the hearing could not be scheduled until the alleged offenders had been fully tried. So he waited another eight months, more than 20 months after the assault (approximately the gestation period for an elephant) for the criminal justice system to finally give birth to convictions for the assailants. Mr. Wamback phoned the Board with the good news: it could finally get going. But no.

159 *The Board wrote to Mr. Wamback a month later, advising that it could not proceed until the offenders' appeals were heard. He was also told, much to his dismay, that the Board was required to give notice to the offenders. This proved to be too much for an exasperated Mr. Wamback. After three years of waiting, he withdrew his application for compensation. While his application was subsequently reinstated with the assistance of my predecessor, it was ultimately withdrawn again because of other frustrations.*

160 I share the Wambacks' story in an attempt to personalize the depth of frustration that can be caused by having to wait for the criminal justice system to bear fruit. I do it to underscore that "waiting for Godot" to arrive with a verdict is appropriate only where the wait is truly necessary to enable the Board to do its job. It is just too costly in human terms to pass the buck to the criminal courts to make the decision.

Trivial Pursuit: The Search for the Perfect Application

Forms and Formalities: Eva-Marie and Thomas Devine's Story

161 *On June 1, 2006, Eva-Marie and Thomas Devine suffered an unbearable loss in a most unspeakable way. Their 33-year-old daughter Deborah was strangled and set on fire, allegedly by her common-law husband. It was an event that would draw the Devines into the Kafkaesque world of the Criminal Injuries Compensation Board.*

162 *The Devines are seniors who survive on Mr. Devine's modest pension. Mrs. Devine is legally blind. Burying their daughter was not only emotionally devastating, it was a financial blow that required the Devines to empty their savings account. A counsellor at the courthouse told them that the Criminal Injuries Compensation Board would provide assistance with emergency expenses such as their daughter's funeral, so, on June 5, 2006, Mrs. Devine phoned the Board and arranged for the application documents. A file was opened and marked "Priority: Funeral Expenses." Mrs. Devine completed the documentation on June 12, 2006. She also sent in an expense form for $4,741.41*

in funeral expenses together with an invoice from the funeral home for $4,586.27 marked "PAID," and a receipt for 14 meals (for relatives who had attended the funeral) for $155.14. Mrs. Devine enclosed the documentation in a letter in which she confessed to the couple's pressing need for the money so they could buy food for the balance of the month. Her closing salutation in the letter was as polite as it was naive: "I would like to thank you in advance for your speedy attention to this matter."

163 *By June 29, 2006, Mrs. Devine was becoming increasingly anxious about her crushing financial situation. She contacted the Criminal Injuries Compensation Board to find out about her claim. She spoke to a second Board staff member, but apparently, she committed the cardinal sin of neglecting to quote the file number when she made the inquiry. She was warned to remember her number and told she would be contacted after her file was reviewed.*

164 *On July 6, 2006, Mrs. Devine contacted the Board again, speaking to yet another staff member. She was told the forms had been received and if anything further was required of her, she would be notified by the Board in writing. The Board file indicates that she expressed frustration and disappointment at the length of time the process was taking.*

165 *On July 10, 2006, Mrs. Devine spoke to a fourth member of the Criminal Injuries Compensation Board staff to inquire about the status of her claim. She explained she was in need of financial assistance and asked that the claim be expedited. She was told she could submit a letter to the Chair explaining her circumstances.*

166 *On July 12, 2006, Mrs. Devine called the Board again and asked who had been assigned to her file. She spoke with the same individual she had contacted two days earlier. However, this time she was told that no one was assigned to her file, but a letter had been mailed to her because her forms had not been properly completed. It was noted in the file that she became "really upset" upon hearing this. On the same day, another staff member (number 5 at this point) spoke to Mrs. Devine. Mrs. Devine explained she needed the funeral money so her bills could be paid. The Board's notes reflect how desperate Mrs. Devine was becoming. She was transferred, at her insistence, to a supervisor (number 6). The supervisor's notes record that "the applicant was upset to learn that forms were returned to her for correction on July 10th." She further noted:*

> *Assured applicant that Board makes every effort to prioritize claims relating to funeral expenses, which is why response was issued within a three-week timeframe. Applicant argued that issue could have been*

resolved by phone – advised not possible as CICB cannot alter forms on her behalf ... Explained that although file will be given priority treatment, there are procedural guidelines, which must be adhered to – the next step will be to obtain a PQ [Police Questionnaire]. Applicant questioned why this action had not been taken already. Advised not possible without a correctly completed claim form as that is the point at which a claim is considered to exist.

167 *On July 14, 2006, the supervisor spoke with Mrs. Devine again to "query" the name on the funeral home receipt she had submitted. Mrs. Devine confirmed that the invoice was in her husband's name, but a receipt had been issued in her name. The supervisor advised Mrs. Devine that the Board required the original receipt. Mrs. Devine did not wish to part with the original receipt, believing she might need it, so she asked whether she could submit a certified copy. She was told she could address that question to the analyst when one was assigned to the file. The file was then dispatched to the analyst bin.*

168 *By now the Devines were falling behind in their bills and experiencing great personal anxiety. Mrs. Devine wrote to her Member of Provincial Parliament asking for help. The MPP's office interceded after it learned that no analyst had yet been assigned; a supervisor assured the MPP's staff that priority was being given to the file, that an analyst would be appointed by day's end, and that the Police Questionnaire had been requested – in fact, the request was sent out that same day.*

169 *On July 18, 2006, an analyst (staff member number 8) wrote to Mrs. Devine. In a brief introduction she noted, "On behalf of the Board, please accept our condolences to you and your family on the loss of your daughter..." She then went on to outline the details required before the funeral expense claim could be processed. Mrs. Devine was asked to provide details of the estate left by her daughter as well as any benefits received by survivors from all sources, and any original receipts/invoices. In addition, she was advised to sign and date a Benefits Form regardless of whether she was declaring benefits or not. She was also advised that the Board would "consider" reimbursing the individual whose name appeared on the receipt. On July 19, 2006 this same staff member noted in the electronic record that a certified copy of a funeral invoice had been received. The staff member also indicated in the file:*

> *I will ask her, in my initial letter, to submit the original invoice or the receipts; however, if she continues to refuse, we should not insist further and accept what is on the file.*

170 *On July 25, 2006, Mrs. Devine called the Board to speak to the analyst assigned to the case. She was given voice mail, so she called back and spoke to another staff member (number 9). Her call was transferred to yet another manager (the 10th staff member to deal with the file). Mrs. Devine indicated that she objected to having to provide the original receipt for funeral costs and explained there were no benefits or insurance, etc. She was advised that the intent of the form was to confirm that there are no such benefits, and that she should confirm this in writing to the analyst. The notes on the file indicate:*

> *Advised it is the Board's policy to request original receipts and although she says a certified copy has been provided, this is not acceptable ... She insists she will go to the funeral home to obtain another receipt made out in her name. Conferred with CAO and will advise she can do this. Confirmation to be made at a later date as to who actually incurred this expense.*

171 *Mrs. Devine wrote to the Board immediately, enclosing an "original" funeral bill made out in her name. The accompanying letter expresses how insulted she was at the way she was being treated:*

> *People who make these claims are not doing it for the sake of their health, or as an exercise in futility, but because they are in need. They have obviously dealt with the death of a loved [one], in our case the murder of our daughter, and are under enough stress without your board adding to it.*

172 *Later that same day, a manager called to tell her the certified copy would suffice. The next day, this manager also called the police involved in the case, asking for the Police Questionnaire to be expedited. Meanwhile, Mrs. Devine filled out the Benefits Form confirming that she would not be receiving any income or benefits from other sources and supplied it to the Board. The Police Questionnaire was returned approximately a week later. On Aug. 3, 2006, the file, now finally completed in a manner satisfactory to the Board, began the documentary hearing process. An order dated that day from a Vice Chair approving the payment of funeral expenses was sent to the Board order clerk and the Chair for final review. And there it waited.*

173 *On Aug. 9, 2006, Mrs. Devine called the Board and spoke to a staff member (the 10th to deal with her directly, and the 11th involved in the file), who eventually transferred her call to another staff member (number 12). Even though the hearing had already been held, this employee asked her if she had spoken to her*

husband regarding waiving the 10-day notice period required before a hearing. Mrs. Devine stated that she had submitted a letter about this. She was told the Board's order was being processed. The next day, the Board received a waiver signed by Mrs. Devine, dated Aug. 3, 2006.

174 *On Aug. 16, 2006, Mrs. Devine called the Board and spoke to the same staff member who had initially warned her to remember her file number. She was advised that the decision regarding the funeral expenses had not yet been released and that this staff member would no longer have any involvement in the file, as it had already gone to a hearing. This upset Mrs. Devine, who asked to speak to someone with more authority. She was transferred to the supervisor she had dealt with in July, who reiterated that the decision was not yet final and processing would be completed in the near future. She was also told that administrative staff could not confirm or deny whether compensation had been granted, nor could they divulge any amount. The suggestion that an award might not be issued upset Mrs. Devine. The supervisor gave Mrs. Devine her direct telephone number so she could provide it to others advocating on her behalf.*

175 *On Aug. 17, 2006, the Victim Services unit of the Devines' local police called to ask about the status of the file, as did the office of their MPP. On Aug. 18, 2006, the Board supervisor explained to the MPP's staff person that a hearing had been held on Aug. 2, 2006, a decision had been reached and it was moving through the post-hearing process.*

176 *On Aug. 21, 2006, the Ombudsman's Office called the Board after having been contacted by the Devines. The staff member dealing with the matter checked with the Finance manager and was told that it would be approximately two weeks before the decision – which had been made almost three weeks earlier – would be released. We were advised that the Board could not confirm whether or not compensation had been awarded. The Board's records indicate that the order and file were sent to the Finance Unit that same day.*

177 *The Board's order was finally mailed out on Aug. 28, 2006; a cheque in the amount of $4,586.27 had been issued Aug. 24, 2006 to both Mr. and Mrs. Devine. In accordance with the Board's policy, the modest $155.14 incurred by the Devines to feed 14 people attending the funeral was not reimbursed.*

178 *The Devines' dealings with the Board are not yet over; they have also filed claims for nervous shock, which are slowly winding their way through the Board's process.*

179 Anyone reading this account should be discouraged by how bureaucratically and insensitively Mrs. Devine was treated. She was treated as a case, not a person – let alone a grieving pensioner who needed immediate financial help to feed her family and keep her creditors at bay. While her laudable persistence and the advocates she called in to help no doubt greased the rails in places, it was not before she was forced to run a gauntlet of rules and rigidity. She was made to wait three months after her plea for food money, including close to a month after a decision had been made. She was bounced around by a dozen workers, most of whom seemed more focused on formal compliance with rules than on helping her. She was told her claim did not exist until her application was corrected, chided and warned for forgetting her file number, and made to fill out a Benefits Form in order to complete the file, even though the family had not received benefits. Her file was treated with suspicion – original documents were insisted on even when a certified copy was supplied and even after the decision had been made to accept the copy – as if she might be somehow improperly trying to claim money paid by her husband out of what proved to be their joint account.

180 The Devine case exemplifies the way the Board employs forms and formalities. While there may come a point when a sensitive worker looks the other way to ease an applicant's stress, our investigation witnessed an institution that demands a standard of perfectionism from victims that it does not itself live up to. As the Devine case shows, the Board's rulitis has given rise to an "official document" fetish. The Board takes the view that claim forms are official legal declarations and therefore all documents must be originals. This rule was applied so unremittingly in one case that a photocopy was rejected even though it bore the original barcode and file number. Worse, where an error is identified that an analyst believes should be corrected, the Board's administrators will not simply correct the file. It apparently does not matter how immaterial the error is to the ultimate outcome; the position is that these are official documents and only the applicant can make changes, so documents that are adequate in substance are sent back because of form.

181 Some of the "errors" for which the Board demands corrections are positively embarrassing. In one instance, one of the defects identified in a returned document was that the applicant, John Wilkins, had forgotten to dot the second "i" in his name – as astounding as that is, I am not making it up. The Board should be ashamed of such a lack of judgment. It has the latitude to set its own rules, and it is praiseworthy that it wants claims to be authenticated, but where the error is not of a nature that can throw authenticity or understanding into real doubt, or where concerns can be cleared up by simple human contact, there should be no insistence on perfection. Many victims are simply overwhelmed by

the volume and complexity of the forms, and such bureaucratic demands only aggravate their suffering.

182 I was struck by the account of a woman who came to our Office to complain about the Criminal Injuries Compensation Board. She had applied for compensation on behalf of her 41-year-old son, who had been so severely beaten that he was left totally disabled and institutionalized. She recalled a moment when she looked at the 51 pieces of paper collected to support her claim, and simply broke down. She had faced the trauma of almost losing her son and the daily pain of seeing him so severely and permanently debilitated, but the Board's procedural fetish was just one disappointment, one frustration too many. She did not walk away from her experience feeling supported. She walked away feeling aggrieved.

183 Joseph Wamback, whose experience is described on page 45, is a strong man. As a result of his experience as a crime victim, he founded the Canadian Crime Victims Foundation, dedicated to giving victims a voice. Here, in his voice, are his impressions of the Board's administrative practices:

> I'd like to know why roadblocks are put in place for people, why forms are so difficult to fill out, why nobody provides assistance in filling out those forms – compassionate assistance, understanding people that will sit down and talk to those who are just so emotionally destroyed that they have difficulty preparing dinner or finding their way home … Only those who have been there can really understand the depth of anguish, of pain, of confusion, suffering, anger, all the emotions that are rolled into one. Only if you've been there or if you have been close to being there can you truly understand.

184 I don't claim to understand what being a victim of serious crime is like. I can claim to know, however, when rule obsession and formalism are so offensive that they defeat the spirit and force people to give up. This is the ultimate mark of failure in service delivery.

Losing Perspective: The Board's Institutionalized Insensitivity

185 While our investigators heard some positive stories of victim experiences with individual staff members, and while we noticed that in both the Almeida and Devine cases, Board employees did cast aside formal policies when faced with

despairing applicants. I regret to say that institutionally, the Board has lost the personal, human touch that is so critical to the role it performs.

186 Remarkably, the Criminal Injuries Compensation Board staff have not received any formal training to help them understand the needs of crime victims. This is troubling and unwise. But the main problem is that insensitivity has been institutionalzed. It manifests itself not only in the bureaucratic procedures and the use of delay strategems I have described, but in the way the Board treats individuals – through administrative habits that include discouraging contact, applying "it's not my job" practices, using threats to make victims follow standard procedures, and ordering oral hearings in cases which could be dealt with on paper.

Discouraging Contact

187 The Board's website, under the banner "Important Information for Applicants," warns victims about the length of time it will take to release decisions, and then chides: "It is best NOT to call the office during this [delay], as details of the decision will NOT be released over the phone." Priscilla de Villiers, a prominent victims' rights advocate,[28] told us that six months after she applied for compensation following the 1991 murder of her daughter, Nina, she received a "very terse" three-line letter telling her it would take up to 18 months to process her claim, so there would be no point in phoning or contacting the Board. Ms. de Villiers is fair-minded about this. She said, "I honestly don't think there's ill will or anything like that. I honestly think the system is completely out of whack, it's just overburdened." I have no doubt that this is why contact is discouraged, but I want to stress how depersonalizing this is for victims. It turns an institution that is meant to link victims of crime to the support of the people of Ontario, into one that exhibits an impersonal, "wait your turn," conveyer-belt mentality.

The Impersonal Touch

188 What adds to the woodening of the experience are the assembly-line practices for processing files. The Board's intake staff – the claims representatives – field all calls and victims may be shuffled from one person to another before they can obtain the information they require. Analysts are not required to talk to victims,

[28] Ms. de Villiers was the founder of the now-defunct CAVEAT (Canadians Against Violence), helped organize and is currently a member of the Canadian Association for Victim Assistance, and is involved with the Canadian Crime Victims Foundation. She was also a member of the Ontario Office for Victims of Crime and has thus seen the Board operate from a range of perspectives.

and the letters they send out do not provide their direct telephone numbers. Ms. Devine's three-month saga to have her daughter's funeral expenses subsidized brought her into contact with numerous employees, some of whom declared an inability to help her because it was not their job. Her experience is not an isolated one. Another victim, whose 16-year-old son was murdered, told us she had to speak to eight different staff members during the claims process. These rigid job assignment practices may bring a certain administrative efficiency to the system (although we saw little sign of that), but they produce two unpalatable consequences: First, no one takes ownership of files, reducing the prospect that victims will receive their due. Many victims complained to us that they were never told about things like interim assistance, or their entitlement to claim expenses like funeral costs. Second, the process becomes depersonalizing instead of supportive. As one psychologist we interviewed observed:

> These are extremely traumatized people who can barely get out of bed in the morning, let alone fill out numerous forms or make a phone call to get assistance … every time they phone they get a different person.

Systems over Sympathy

189 I was startled to discover during this investigation that the Board sometimes uses a heavy hand to make its systems work. I have described the warning letters that victims receive, threatening to close their files if documents are not completed within a certain time. An ethic of caring would have staff members contacting those victims to see if they require help or to ask politely if the application is going to be abandoned, and why.

190 Then there is the policy of using threats to protect the the privacy of files. Victims are notified in the documentation they receive that there is a file number on each form and this number must be given before any information about the claim can be provided. This is a sensible way to protect privacy, but the Board's file number rule is enforced with revolting insensitivity.

191 We spoke to front-line staff who explained that if victims who call the Board forget their file numbers, they are given a "one-time option" to go through an extended security check. Most of us have experienced such a check when dealing with credit card companies or the like – a clerk asks several questions to verify that we are who we say we are. But most of us have not experienced the kind of "one-time" warning that is given to crime victims by the Criminal Injuries Compensation Board, where files are "flagged" so that staff know to be even stricter if the same client forgets the number again. Victims who do forget again

are told their calls will not be processed until they write in with a request for information accompanied by two pieces of identification. I could only cringe when I learned of how Mrs. Devine, whose daughter had been so obscenely brutalized less than a month before, was treated after she forgot her file number when she first called the Board to inquire about the status of her file. This is the Board's record of the call:

> Applicant without file # re claim status. Confirmed particulars and released. Advised one-time option only. Any future inquiries without file number would require her to submit 2 pieces ID with letter requesting access to file. Advised file to be reviewed. Will be contacted in writing re next step.

192 Her file was marked "WARNING RE FILE #." This demonstrates breathtaking insensitivity. Systems should never be allowed to replace sympathy in an institution such as this.

Relive it Again: Pointless Repetition

193 The Board also employs a misguided practice of requiring victims to tell their stories over and over again. I cannot give a statistical breakdown to confirm the intensity of the problem, but I was left with the uneasy impression that the same insensitivity with which the Board demands victims and their families file multiple, largely duplicated claims is displayed in what appears to be an overuse of oral hearings. I have described how crushed Mr. Almeida was when he was told that he would have to attend an oral hearing relating to the costs of his daughter's funeral, even though he had already attended one as part of his general compensation application. "Melissa" was also deeply disturbed by the oral hearing process. She was made to go through an oral hearing even though the vile crime committed against her, her medical condition and her emotional fragility were well documented. After courageously enduring her attacker's criminal trial, she was required once again to sit before strangers and dredge up the past, to look at photographs of her own beaten body, and repeat testimony that she had given at length years before. The hearing was pointless, and far from painless.

194 Under the current system, the Board determines whether to have oral or written hearings. While there are no doubt cases where it is necessary to explore issues in the more flexible and directly responsive form of oral testimony in order to process a claim properly, oral hearings should be held only where absolutely necessary, or where victims signal their desire to be heard.

195 The apparent penchant for oral hearings is symptomatic of the defensive atmosphere that casts a shadow over the Board's process. An adjudicative model need not be adversarial. The issues presented in a compensation claim are, for the most part, straightforward and non-contentious. Adjudication should be quick and simple, in keeping with the goal of providing financial support to victims when they need it. As an administrative body, the Board has the flexibility to develop procedures and practices that increase efficiency while supporting crime victims. Instead, too many of its administrative practices smack of suspicion and confrontation.

The Fiscal Guardian at the Gate: Fettering Discretion

196 Within the limits set by law, the Criminal Injuries Compensation Board is to determine how much compensation it awards. This discretion gives the Board the kind of flexibility that, for instance, Alberta's list of fixed awards based on types of injury (known colloquially as a "meat chart") denies. There is value in tailoring awards to fit specific cases; this is why there are no fixed compensation awards in our tort-based court system. There are, of course, ranges and practices, but they cannot be made rigid or even routine without destroying the goal of judging each case on its merits.

197 The Criminal Injuries Compensation Board knows it should not fetter the discretion assigned to it by law, but I am concerned that it has come perilously close to doing so because of the fiscal pressures it is under. The legislation, for example, limits loss of wage compensation to $1,000 per month. The Board has used this maximum to create guidelines to limit lost wages to $50 a day and $250 a week. This practice may make weak arithmetic sense, but the law does not actually limit daily or weekly wage loss payments. In 1994, a court cautioned that this practice could be fettering the Board's discretion.[29]

198 There is also a practice within the Board to limit what it will pay registered psychologists or psychiatrists for therapy. The top-end rate is $125 per hour. We were told by a psychologist that these rates are unrealistic. The top-end rates are created by the Board, not the legislation. Similarly, the Board limits therapy compensation to $5,000. While this has occasionally been exceeded, a legal clinic we spoke to complained that the Board's practices are too rigid and place a heavy onus on applicants. One of their clients moved to another part of town and

[29] *Leung v. Ontario (Criminal Injuries Compensation Board)* (1995), 82 O.A.C. 43 (Div. Ct.).

had to file for variation to be able to recover her therapy costs. Using such predetermined compensation ceilings also fails to recognize that it can take years for victims to achieve medically acceptable levels of recovery. Some professionals we spoke to said they have had to resort to pro bono work to complete therapy programs because the ceiling could not be breached. Crime victims should not be left to rely on professional handouts because of the fiscal management polices of the body that purports to help them pay for therapy.

199 Then there are the Board's funeral expense guidelines. The maximum compensation presented in the Board's published guidelines for April 2006 is $9,000. While the Board does deviate from this guideline occasionally, few applicants would know this because the guidelines leave the clear impression that this amount is set in advance.

200 I have already described how the Board has been left under intolerable financial strain by underfunding. The point here is that fiscal pressures are causing the Board to impose limits on what it can do for victims, even where the statute and regulations do not provide those limits. This should not be happening.

Below the Radar: Reliance on "Outreach Failure"

201 The Province of Ontario has long touted its victims' rights programs. The Victims' Justice Action Plan, launched in 2000, is dedicated to developing "an integrated justice-sector service that is responsive to the needs of crime victims." Obviously, true integration would ensure that justice service providers make victims of violent crime aware of other services offered, including the *Compensation for Victims of Crime Act*. The Office for Victims of Crime was created in 1998 as an external advisory body whose mandate was, in part, to ensure that services reflect the principles of the Ontario *Victims' Bill of Rights*, which promises that justice officials will inform victims about the *Compensation for Victims of Crime Act*. Yet although there are, on average, 100,000 victims of violent crime in Ontario per year, only 2.5% apply to the Criminal Injuries Compensation Board. That is only 1 in 40.

202 This paltry pickup rate shows that any outreach effort being undertaken within the justice service sector is a dismal failure. There is absolutely no reason to believe that such an overwhelming majority of victims of violent crime would not want or need help; there are doubtlessly thousands in this province who could profit from

the assistance of the Board but do not know that support exists. And those most apt to miss out, as always, are those who are the most vulnerable and helpless.

203 If not for this outreach failure, however, the Criminal Injuries Compensation Board would surely collapse. If everyone entitled to apply did so, the backlog would increase 40-fold. While, to its credit, the Criminal Injuries Compensation Board did undertake an outreach program a few years ago that materially contributed to its own backlog, the fact is that the Board is so underfunded and undersupported that it essentially depends on staying below the public's radar to survive. The Board can only function at the level it does because it remains so unknown to so many.

204 It is apparent that underfunding is placing intolerable pressure on the Criminal Injuries Compensation Board, so much so that its survival instinct is defeating its purpose. The Board depends on the majority of victims not applying, and to cope with those who do, it has chosen to postpone files with the collateral result that many applicants become so discouraged that they give up. Perversely, this eases pressure on a Board that is meant to ease pressure on victims. It is obvious that leaving the Board to do its job without the resources it needs has all but guaranteed its descent into institutional insensitivity. It would be bad enough if a licence bureau behaved this way; it is intolerable for a victims' services institution.

205 The remaining question is: Can the Government plead ignorance? The answer is a deafening no. The Government is complicit, if not primarily responsible, for it has stood by watching all of this, with eyes wide shut, knowing full well that it is breaking the promises made in the *Compensation for Victims of Crime Act*.

Eyes Wide Shut: Governments Frozen at the Crossroads

Seven Kinds of Stalling

206 It made me wonder why this investigation was even necessary when I read it:

> The [Ombudsman's] review will show that the CICB is in very bad shape and by implication, the government will wear this conclusion politically.

207 This passage, contained in a Ministry of the Attorney General e-mail dated Aug. 23, 2006, says two material things. First, it serves as proof that the Ministry is aware of how dysfunctional the Criminal Injuries Compensation Board has become. Second, it is an implicit admission that the Ministry knows the Government of Ontario has been derelict – had it acted decisively and appropriately, there would be nothing to "wear" politically.

208 While the Ministry e-mail serves as a concise confession, it was hardly needed for me to arrive at these conclusions. It was obvious from the materials we collected that the Ministry has long been aware of the Board's problems, not just in general terms, but in sordid detail. My Office uncovered thousands of pages of internal documents dating back a decade, recounting the Board's sorry state of affairs. As early as 1996, the Ministry began to talk of the need for restructuring. In the past five years in particular, there has been an avalanche of documents discussing the Board's persistent failure and the anguish that it is causing victims. By way of example:

- In December 2002, an Office for Victims of Crime report described in mild and clinical terms how many victims have expressed their dissatisfaction with the cumbersome "bureaucratic red tape" process for accessing compensation;

- In May 2003, Cabinet speaking notes prepared on behalf of the Attorney General described a catalogue of complaints by victims and stakeholders, including long delays and revictimization;

- In December 2003, the Attorney General fielded a complaint that the compensation process was taking years, and that victims were feeling revictimized;

- Also in December 2003, the Criminal Injuries Compensation Board regaled the Management Board of Cabinet with the litany of problems that underfunding leads to – long delays, complaints from applicants, revictimization, staff dissatisfaction and burnout;

- In November 2004, the Chair of the Board cautioned the Attorney General that delays were getting worse;

- In April 2005, a Ministry e-mail warned that at the current application rate, the case backlog could be 17,500 by the fall of 2007, with a potential liability of over $100 million;

- In April 2006, the Board, while forwarding a reform proposal to the Ministry, warned that it could not continue to sustain its program. It said "the system is clearly broken and is impacting the services being provided to victims."

209 Perhaps the most dispiriting document is speaking notes prepared for the current Attorney General for a February 2006 Cabinet Policy Committee, which indicate the program backlog was increasing at an unsustainable rate. The document acknowledges:

> Each year, the Board only adjudicates half the applications it receives and applicants wait many years for their cases to be heard – this delays healing and can prolong victimization. As of Oct. 2005, the backlog liability is estimated at $74 million. If we do not do anything about this, it will grow to $109 million by Oct. 2007....

210 And what has been the Government's response? To emulate previous governments and do nothing. During the past decade of decline, one government after another has stood frozen at the same crossroads.

211 To be clear, the complaint is not that governments have failed to think. It is that they have failed to act. They have thought plenty. Indeed, just as red tape and delay have become the Board's ungainly coping mechanisms, thought and debate and study have been the coping mechanisms for governments. The problem has been studied to death.

212 During this investigation, we pored over thousands of pages of Ministry and Board policy documents, all proposing solutions, all going nowhere. While I do not object to proposals for sorely-needed reform and am neither endorsing nor rejecting the ideas presented, I am concerned that all this talk looks more like another delay stratagem than a genuine effort for change. This is apparent when one reviews the varied and often conflicting plans. Essentially, the myriad suggestions can be categorized as seven different options:

Policy Option 1

213 This option is not so much a solution as a quick fix – a cash infusion that has primarily been proposed or executed as a retroactive payment to cover the costs incurred by the Board in the previous fiscal year.

214 The Victim Justice Fund has become the usual pot for such bailouts – even though the Management Board of Cabinet stated in October 2003 that the appropriate source of funding for the adjudicative agency was the Consolidated Revenue Fund, not the Victim Justice Fund. This perennial reliance on the Victim Justice Fund has one upside: It shreds the taboo that the Fund cannot be used for the Criminal Injuries Compensation Board. Not surprisingly, by the fall of 2005, Ministry officials began to promote the Victim Justice Fund not just as a source of immediate bailout money but to help reduce the backlog – a suggestion that has been repeated on occasion but unfortunately never undertaken.

215 In recent years, as part of the current Government's "results-based planning" program, it seems the ambition has been less to find a way to make the existing Board regime work and more to find a way to cut its annual cost by $10 million – almost half its budget. In May 2006, Ministry officials pointed to the Victim Justice Fund, suggesting it could be used as a stopgap funding measure, pending radical surgery on the Criminal Injuries Compensation Board to halve its annual costs.

216 While there has been much discussion about cash infusion, it has never been endorsed as a long-term strategy. Apart from a memo in April 2001 when one proposed model included an enhanced budget for the Board, we found no memos saying "let's give the Criminal Injuries Compensation Board the funds it needs."

Policy Option 2

217 This option involves attempts by the Ministry to exert control over the spending habits of the Criminal Injuries Compensation Board to make sure it stays within its budget. In August 2001, the Ministry proposed to help the Board forecast its caseload and achieve structural reform. In October 2001, the idea was floated of asking the Board to consider management controls, as if it was spending too much. In 2003-2004, the proposal was more aggressive – it was to include a provision in a Memorandum of Understanding requiring the Board to operate within its budget. And at times, attempts have been made to chide the Board for its overspending, such as in September 2003, when the Ministry learned that it increased its staff without Ministry approval.

218 Attempting to impose management control by policy, agreement or pestering is, of course, no solution to the dysfunctional way the financially overburdened Board operates; even if it worked, management control would only solve budget overruns. It would not address the real problem – that the program is weak because it is financially malnourished. In fact, imposing management control

cannot work because the Board cannot, as a matter of law, agree to set limits on its spending. The law requires it to decide claims on their merits, not according to a budget envelope.

Policy Option 3

219 Because the existing law restricts governments from limiting compensation awards by imposing budget controls, it has been proposed from time to time that the legislation be changed to require the Board to stay within its budget. This proposal was first fielded in October 2001. It was advanced again in April 2003 in a Ministry briefing note, and repeated in a January 2004 action plan.

220 In truth, though, such a plan it is not a way to solve the dysfunction in the Criminal Injuries Compensation Board but merely a way to assure that it can sustain itself at its current level of dysfunction.

Policy Option 4

221 The fourth suggested direction for reform has been to download part of the costs of victim compensation onto others. It has been proposed in several different guises. Until the advent of the federal Victim Fine Surcharge, the federal government contributed 50% of the costs of victim compensation. Things are so desperate at present that a July 2006 briefing note advocated approaching the federal government to reinstate the cost-sharing model.

222 The Ministry raised the possibility in April 2005 of tapping community organizations to deliver emergency and interim funding and counselling services. This kind of proposal, styled at times as a "business plan," clearly intrigued the Ministry. In November 2005, a Ministry policy document discussed the possibility of appointing a Criminal Injuries Compensation Commissioner who would be responsible for, among other things, administering a non-profit corporation that would raise private-sector donations to fund victim assistance and recovery.

223 The prospect of making offenders pay more has also been considered. The *Victims' Bill of Rights* makes it easy for victims to sue violent offenders who have harmed them. Unrealistically (because of delay and the fact that few offenders have financial assets) this was held out in April 2001 as something that could "obviate the need for the CICB to provide monetary compensation in some cases." An October 2005 policy document proposed raising the Victim Surcharge

as a way to offset compensation costs. But, since judges look for assurance of ability to pay before imposing surcharges, offender contributions are no panacea.

224 The Ministry understands that finding other sources of funding is not a full-throttle solution. It appreciates that such strategies will not solve problems on their own. When put forward, these initiatives tend to be focused on reducing government funding pressures as part of a larger plan that includes downsizing compensation services.

Policy Option 5

225 There have also been efforts to exploit and formalize existing ways to say "no" to compensation applicants, or to create new ones. In effect, this would formalize the Board's key coping strategy of erecting hurdles to victims' eligibility. The Board itself recommended in the summer of 2004, for example, that victims who fail to report their own crimes to the police, and those who have committed crimes within five years of applying for compensation, be deemed ineligible by law. In April 2005, the Ministry advocated stricter limits on the time period during which victims may file a claim (except for sexual offence cases). In July 2006, the Board proposed regulatory changes that would enshrine its existing Rules of Procedure in law, including all of its process-based hurdles. These new rules would include time limits on eligibility and the closure of dormant files.

Policy Option 6

226 It is evident that if the Province is not prepared to fund the model it has created, it has to either abolish the compensation program or downsize it to fit the commitment it is prepared to make. While outright abolition of victim compensation has been put on the table from time to time, downsizing proposals are far more common. There is a rich array of them in Ministry and Board documents.

227 Many of the reform plans contemplate limiting the size of awards. Such proposals were made in October 2001 and January 2004. This approach reached its zenith with a suggestion to simply give each victim $1,000. Alternative or added savings could be achieved by limiting the nature of awards; the January 2004 Ministry proposal suggested abolishing "pain and suffering" and "loss of income" awards. It was even proposed in August 2005 that compensation only be given for expenses that could not be covered by other sources.

228 Other reform plans employ a case-reduction strategy that would diminish the pool of eligible victims. Plans of this ilk have been advanced since April 2001. In January 2004, an attempt was made to limit compensation to more "serious" victims. By May of 2005, the Ministry suggested targeting only victims of sexual assault, domestic violence and child abuse, reducing the number of eligible victims by half. It also tendered the option of focusing only on catastrophic injuries and death benefits, which would disqualify 99% of claimants. Ministry records suggest that this latter plan was the option of choice for the Deputy Attorney General. In July of 2005, Ministry documents offered the option of supplementing the catastrophic injury benefit with an expenses-only compensation plan.

229 Still other downsizing plans involve changing the compensation delivery model. In January 2004, a proposal was advanced to modify the adjudicative system to achieve increased efficiency. Most of these proposals involve switching to an administrative model such as those employed in other provinces. This was proposed as long ago as April 2001, again in the fall of that year, and, in the fall of 2003, an administrative model that would cut the budget in half (to $10 million) was advocated. As recently as October 2005, consideration was still being given to a "cash awards" approach that would be limited to priority victims, with caps imposed on awards. In January of 2004, serious discussion focused on the Alberta model, which employs a "meat-chart" schedule of fixed benefits according to the degree of victimization experienced. In April of 2005, variations of the Alberta model were featured in three of the four alternatives costed in a report by Deloitte consultants.

230 The Board has participated in these downsizing plans in an apparent effort to exert some control over which of its limbs is to be amputated. In the summer of 2004, the Board put forward a plan that integrated features of each of the strategies available for making the program leaner but meaner. It recommended that a new omnibus bill be introduced which would limit entitlement to victims of domestic violence and sexual abuse, those with disabilities and the elderly. There would be no awards for general pain and suffering, and lump sum payments would top out at $50,000. While no interim payments would be made, the program would fund up to 20 hours of counselling.

231 In the fall of 2004, the Ministry wanted to adopt an arm's-length administrative model that would provide funding for a limited range of offences according to a schedule of benefits that would exclude periodic payments. Emergency assistance, such as counselling, would be available.

232 More recently, many reform proposals, including one that for a time curried great favour within the present Government, have gone beyond downsizing compensation. They in effect proposed to neuter the compensation program by focusing on emergency relief. To hide the scars of radical surgery, these proposals tended to come with instructions on how to spin the decision to the public. The strategy essentially involved standing this shrivelled corpus of compensation in the back row behind existing victim-assistance programs, and presenting them together as if they formed a re-energized and mightier team of benefits.

233 In May 2005, the Ministry recommended, among four reform options, an emergency plan. It suggested the existing compensation legislation could be repealed, with the funds to be reinvested in community-based services. More specifically, up to 12 hours of short-term counselling would be offered to victims. This recommendation was inspired by the New South Wales approach, which has been sold as a way to reduce crime victims' need for financial benefits by better enabling them to cope. It is also thought to provide for better integration of victim services because the early intervention can help direct victims to relevant services as their cases move through the system. In August of 2005, this general model was adapted in Ministry documentation as one possible direction. In addition to counselling, small payments would be made available for victims' short-term expenses, such as emergency accommodation.

234 Not surprisingly, this model was attractive to the Ontario Victim Services Secretariat, which is interested not in compensation in particular, but in the general delivery of victims' services, within fiscal parameters. In October of 2005, a policy document it prepared offered as one of two choices (the other being a tightly controlled cash awards system) an "Enhanced Victim Services" model that would replace compensation with short-term counselling, referrals and support for one-time emergency expenses. It was touted as being a "seamless integrated approach" for victims' services, with the "potential for a greater number of victims to access a holistic network of appropriate services and receive emergency reimbursements." It proposed that a "Victim Services Support Program" be offered and most likely administered by Victim Crisis Assistance and Referral Services sites.

235 This basic structure, improved by the addition of financial assistance for victims of catastrophic injuries, appeared for a time to have gained acceptance within

Government circles. A Jan. 10, 2006 Cabinet submission, spun as offering a "one-window" victim services transformation, advocated a time-limited phase-out plan for the Criminal Injuries Compensation Board backlog while modifying the victim payment model to provide, at a significantly lower budget, for a counselling certificate program (8 to 12 hours); an emergency expense fund (administered by the Victim Crisis Assistance program), and case management services for the most seriously injured victims, coupled with financial assistance according to a schedule of benefits for victims of catastrophic injury (dependents and family members would not be eligible). The package would be subsidized by private-sector contributions obtained by the proposed Victim Assistance and Recovery Foundation. This proposal was apparently considered by a Committee of Cabinet on or about Jan. 17, 2006, as a "bite the bullet and focus on the victims who need it most" plan. By February 2006, however, it seems feet were growing cold and the plan was sweetened and modified. It would cover funeral expenses, and claims for time off work (but only for time spent in court), and it would achieve administrative efficiency by rolling the Office for Victims of Crime and the proposed Victim Assistance and Recovery Foundation together.

236 It is apparent from a Ministry communications plan from March 27, 2006 that it considered this neutering of the Criminal Injuries Compensation Board to be possible, in part, because it felt the Board's failures were such that women's groups had come to view it as adversarial and slow, and victims generally were critical of its ineffectiveness. The new program, according to the plan, could be sold as an initiative that would provide:

> [...] victims with more services that offer them help, available faster and closer to home ... an unprecedented level of funding, more than $89 (TBC) million in 2006/2007, would be dedicated to helping victims of crime and providing practical, effective services.

237 In fact, the "unprecedented level of funding" under this proposal was only intended to be temporary. Once the Criminal Injuries Compensation Board backlog was dealt with, the level of funding for victims' services would be lower than it is now. And the money to reach that "unprecedented level" could well come from funds already dedicated to victims; in April 2006, it was proposed that the Victim Justice Fund be used to offset the short-term financial pressures associated with the Board's backlog.

238 It now appears that even the seventh option, which only a few short months ago looked as though it might move forward, has stalled. First it seemed as though the plan was to postpone the day of reckoning by phasing it in: by May 2006, the Government was speaking of Phase 1 to address the backlog, and Phase 2 to roll out the new model. The reason given for this approach was that "more time is needed to consult with stakeholders and potential service providers." But before long, the plan was in peril. On June 22, 2006, a Minister's Briefing Note recorded an opposition member's call for an update on the status of promised new victims' rights legislation, then stated that there would not likely be any such legislation because there was "no appetite for transformation at this time."

239 And then the kicker – the briefing note records that the answer to the MPP's question is: "We are engaging in a broad consultation, led by [the Office for Victims of Crime], to determine the best mechanisms for transforming victim services in Ontario." It calls for a White Paper – the oldest stall tactic in the book.

240 Meanwhile, the Ministry was still trying to come up with a plan, with its primary objective being to deal with the Criminal Injuries Compensation Board backlog. The goal it expressed in July 2006 was to reduce the estimated cost of the backlog by October 2007 from $110 million to $90 million by: Establishing a tariff for awards and listing eligible offences; treating multiple incidents involving the same parties as one; disposing of cases without hearings; dismissing inactive files; strictly applying application time limits save for sexual and domestic offences, and clawing back costs from final awards. The plan also put five options for longer-term changes on the table, all variations on these themes.

241 In August 2006, the day before I launched my investigation, the Ministry was still offering up new options for dealing with Criminal Injuries Compensation Board backlog. In a presentation entitled "Pre-Transformation Proposal," three reform initiatives were described, including passing regulations to change the Board's processing rules and some of the criteria for awarding compensation for existing files; using the Victim Justice Fund to reduce the bottleneck, and introducing direct services for short-term counselling and covering homicide victims' funeral costs.

242 One senior official told our investigators that the Ministry is waiting for "another opportunity to go forward to the Policy Committee." Another senior official acknowledged that the Ministry did not have a proposal. If that is true, the

Ministry is waiting for more than an opportunity. It is waiting for a plan it believes it can sell. While the Ministry has said that alleviating the Board's backlog is on its immediate agenda, nothing has gone forward, even to deal with that.

243 Reading through the mounds of paper provided to my Office, it is easy to see why nothing has been done and why this government, like those before it, has stood and blinked at the crossroads. There are two key explanations: A deep cultural divide between the Board and the Ministry; and a grievous lack of political will on the part of elected governments.

The Great Divide

244 I do not think it is too much to say that the Ministry views the *Compensation for Victims of Crime Act* as an anachronism, an artifact of a different era. Compensation for victims of crime in Ontario has not moved forward with the advent of other victims' services initiatives, and it simply does not appear to fit the Ministry's new vision of what victims' services should be.

245 In 2003, it was a 2% reduction and a hiring freeze that put the Ministry in opposition to the Board's vision. Each year, government ministries now engage in a "results-based planning" process, and during the 2003/2004 fiscal year, the Criminal Injuries Compensation Board became a heavy target – it was to have its budget halved to achieve $10 million in savings. (The Ontario Victim Service Secretariat proposed a fixed $10-million solution.) And this objective was not shared with the Board – we found a Ministry e-mail saying: "Our intentions … should remain close to the chest."

246 As a result, the Criminal Injuries Compensation Board was working on options without full knowledge of what kind of fiscal savagery awaited it in the minds of the Ministry. It is not surprising that a Ministry e-mail discredited the Board proposal for its heavy costs, with the caveat: "But I don't believe MO [the Minister's Office] has been upfront with [the Chair] about the transformation."

247 The cultural divide between the Ministry and the Board has not been confined to conflicting visions. The Ministry has not demonstrated an adequate understanding that the Board is a quasi-judicial tribunal. The problem goes beyond the Ministry's attempts to control the Board with belt-tightening budgets. In fact, the Ministry was so cavalier about the obvious conflict of interest between the Board's legal duties and the government's budget-cutting ambitions that in January of 2005, it filled the vacant Chief Administrative Officer position at the

Board with an appointee who was cross-appointed to lead the government's "transformation project" targeting the Board. The appointee naturally had a difficult time dividing her loyalties and was forced to remind the Ministry that the Criminal Injuries Compensation Board is not a program but a legislated body; the Ministry could not simply eviscerate it by cutting transfer payments by $10 million. Yet, unchastened, by May the Ministry fantasy was to pull not $10 million from the program but $11 million. A Ministry directive of May 2005 affirmed that budget was its prime motivation: "Meeting the RBP [results-based planning] target is 100% mission control."

248 All of this has led to increased tension between the Ministry and the Board and this has inhibited finding solutions to the backlog. Some within the Ministry even appear to believe that its reform initiatives are being frustrated because, as a May 2005 Ministry memo complains, "the CICB Chair has a direct link with the Minister's Office..." By September of 2005, after the Chair was vocal in rejecting a Ministry proposal to perform a functional lobotomy on the Board, a Ministry insider commented in an e-mail that "Her not participating is UNACCEPTABLE for someone in her position. Like it or not, she has to be part of the solution, not part of the problem."

Playing Politics

249 The second reason for the inertia must be laid at the feet of elected governments, including the present Government of Ontario. For the past decade or more, governments have been fighting with costs. In this climate, none of them want to fully fund the promised compensation program because to do it right – to allow it to work in a timely way and live up to its legislated mandate – the budget of the Criminal Injuries Compensation Board would have to double. It was said best by a Ministry official in a May 2005 e-mail:

> The reality is that the [government] has been operating a $40M program for the last 5 years but funding it at $20M.

250 Meanwhile, government cost-cutters have been casting about for non-core programs and initiatives that can be eliminated, to keep essential services operating and free up money to pay for new political promises and priorities. They see the Criminal Injuries Compensation Board as a ready candidate: After malnourishing it into its enfeebled and unsustainable state, they point out that it is weak and can easily be killed.

251 I do not want to discount entirely the prospect that it is a lingering but muted sensitivity to the needs of victims that keeps elected officials from embracing this advice. It seems highly probable, however, that they are reluctant because they can see the political implications. Who wants their legacy to be that they were the ones who dismantled the Criminal Injuries Compensation Board? There is a high political premium on at least looking like a champion of victims' rights. Not surprisingly, the reform documents we examined are full of passages warning of the potential public reaction to cutbacks. In several proposals, such as the October 2001 Ministry plan and the Oct. 17, 2005 "cash awards" option, concern was raised about "communications issues" and criticism by stakeholders. Others made the sobering observation that if Ontario moved to an emergency-only support system, it would be the only large jurisdiction not offering compensation to victims. And, according to documents relating to a Cabinet Policy Committee meeting in January 2006, talk of the public relations disaster that might follow deep cuts apparently iced enthusiasm for them. Many of the suggested plans included sales pitches, some of them heavier on "spin" than substance.

252 What do elected officials do when they are not prepared to act? They obfuscate and delay. They study and call for White Papers and say they are consulting with stakeholders on issues they already know and understand perfectly. This is a damaging act of abdication. As governments have stood idly by, the backlog has grown like the proverbial lily pad and it is choking the light. Meanwhile, the promise of reforms on the horizon has enabled governments to delay decisive bailouts and to justify stopgap measures or no measures at all. In May 2004, when the Criminal Injuries Compensation Board asked for funding for changes to its case management system, it was told no; like homeowners who sit in the cold rather than fix the furnace because they may be moving in the future, the Ministry refused the request because of the anticipated transformation. Instead of fixing things, it chose to stave off total collapse once again by resorting to cash from the Victim Justice Fund.

253 The permanent budget for the Criminal Injuries Compensation Board for 2006/2007 was cut by $10 million; when the elusive "transformation" still did not occur, approval had to be sought to restore the money. The same is set to happen for 2007/2008. I am advised that efforts are underway to have Treasury Board approve reinstating the $9.4 million that had been taken from the Criminal Injuries Compensation Board's budget for that year on the assumption that changes would be implemented. They haven't been implemented because our elected officials continue to shuffle money and call for study.

254 So there it is. We in the Province of Ontario have broken our promise of support because we will not fund it. The Government of Ontario, motivated by laudable concern for fiscal responsibility and acting through the Ministry of the Attorney General, has, contrary to the law it created, interfered with the Board's autonomy by limiting the money available to the Board to fund its awards. Worse, it has stood by as the Board has evolved into an institution that uses an impenetrable bureaucracy as a means to delay and impede compensation claims by crime victims. Like a bad debtor, it finds ways to delay the day of reckoning. Successive governments have been aware of this, but they have allowed themselves to become frozen into inaction because they are unwilling or unable to commit the funds required, and they fear that any solution they choose will be fraught with political peril. Instead of acting, they have played policy ping-pong over the past several years, indecisively batting a dizzying array of politically unpalatable options back and forth. Thanks to their inaction, the Criminal Injuries Compensation Board has become an institution that causes more pain than it heals – by burying victims in paper, frustrating them with rulitis, and greeting them with wooden responses instead of compassionate and supportive treatment.

Choosing the Road to Recovery

255 The Government did not need an Ombudsman to tell it how intolerable all of this is. This Government, like those before it, has long known the truth about the Criminal Injuries Compensation Board. It is in crisis and victims are paying the price. What this Government needs to do is move forward. As one senior Board official told our investigators in an interview:

> I know things aren't going well here and I don't think it's for a lack of the people caring or wanting or trying to get it better, and I just hope that the Ombudsman pushes something… this indecision, I think, is driving everybody crazy, so either commit to what you've got and resource it properly or change it and resource that properly, but do something … it needs decision, it needs direction.

256 Decision and direction are indeed required. Study and mock consultation cannot be accepted as surrogates for action – not when victims of crime are being harmed by the system. That harm, it must be said, is not caused by the *Compensation for Victims of Crime Act*. It holds out impressive promises. It put Ontario at the forefront of the victims' rights movement, with its inclusion of all victims of violent crime, its broad-ranging support, and its generous levels of compensation.

It is unfortunate that it is only a paper promise that has not for more than a decade, if ever, been given the chance to work.

257 It cannot be forgotten that the *Compensation for Victims of Crime Act* is the law. It is a statutory promise, binding on the Board. It has a job to do and the people of Ontario justifiably expect it to be done. Promises are not made to be broken, especially not when they are promises to those in need.

258 I am therefore recommending that the Government of Ontario keep the promises it has made in the *Compensation for Victims of Crime Act*. I was disappointed to learn that while a multitude of models and plans for victims' compensation have been put on the table during the past decade of decline, the one model that has never been given real currency is the "pay the price" plan. It is a strategy that requires no innovation or stakeholder consultation. It simply involves committing enough resources and support to the Criminal Injuries Compensation Board to ensure that promises made are kept. If this happens, the Board's practices and processes that most debilitate and frustrate victims can end. That is why my first and most important recommendation is that the Ministry of the Attorney General should immediately provide the Criminal Injuries Compensation Board with the resources it needs to process claims in a prompt and efficient manner. I intend this recommendation to extend to the funds needed both to remove the backlog in an urgent and appropriate fashion, and to enable the Criminal Injuries Compensation Board to promptly process any new claims that are filed.

259 This can be done in one of two ways. First, by providing the Criminal Injuries Compensation Board with the budget it needs to process its files in an expeditious and fair way, and by ceasing the practice of requiring it to fund its awards out of its own budget. Compensation would instead be paid directly by the Province. Although I believe this to be the preferred course for funding the awards of a quasi-judicial board that, by law, are to be made on the merits of the applications as they come forward, I hesitate to involve myself in funding modalities. The alternative would be for the Government of Ontario to continue to have awards come from funds transferred to the Criminal Injuries Compensation Board, but to make the necessary transfers to pay for the awards it makes.

260 Either way, much of the money needed is there in the Victim Justice Fund. It is posing as money expended on victims' rights, when in fact it sits, with its large surplus, as a little-used line item on the Government books. That money has been promised to victims of crime, and there is a burning need for it now. It should be used to assist in fixing the Criminal Injuries Compensation Board so it can do its legislated job.

261 Of course, it is always open to the Government to take the other path – to choose to revise or even abolish the Criminal Injuries Compensation Board and adopt a different model of victim support. If the Government should choose to do that, however, I will recommend two things: First, the new model should be developed after meaningful consultation with stakeholders. There has been much talk of consultation during the policy posturing of the past decade, but that which has taken place has not been impressive. Second, the Government should not permit any further consultation on anticipated changes to delay remedying the problems with the Criminal Injuries Compensation Board. There is no merit in letting a problem grow worse at the emotional expense of today's victims of violent crime because of the promise of help for tomorrow's.

262 Given the cultural divide that has developed between the Ministry and the Criminal Injuries Compensation Board and what we have learned about the price of failure, I am also making a series of specific recommendations to deal with the discrete problems I have identified during this investigation. These are detailed under the Recommendations heading.

Opinion

263 It is my opinion that the Ministry of the Attorney General has failed to provide the Criminal Injuries Compensation Board with the resources and support required to fulfill its statutory mandate, and has thereby improperly interfered with the Board's independence. In accordance with subsections 21(1)(b) and (d) of the *Ombudsman Act*, I find that its conduct is unreasonable, unjust, oppressive and wrong.

264 It is also my opinion that the Criminal Injuries Compensation Board has failed to provide adequate, timely and appropriate service to the victims of violent crime that have applied to it for compensation. In accordance with subsections 21(1)(b) and (d) of the *Ombudsman Act*, I find that its conduct is unreasonable, unjust, oppressive and wrong.

Recommendations

The Ministry of the Attorney General

1. I recommend that the Ministry of the Attorney General immediately provide the Criminal Injuries Compensation Board with the resources it needs to process claims in a prompt and efficient manner. I intend this recommendation to extend to the funds needed both to remove the backlog in an urgent and appropriate fashion, and to enable the Criminal Injuries Compensation Board to promptly process any new claims that are filed, and I intend this recommendation to operate even if planning is underway to modify, replace, or abolish the Criminal Injuries Compensation Board.

   Section 21(3)(g) *Ombudsman Act*

2. I recommend that the Ministry of the Attorney General recognize and act consistently with the legal fact that the Criminal Injuries Compensation Board is an independent quasi-judicial agency and not a Ministry program.

   Section 21(3)(g) *Ombudsman Act*

3. I recommend that the Ministry of the Attorney General cease immediately any attempt to control the costs of administering the Criminal Injuries Compensation Board by giving directions or otherwise pressuring the Board to delay or reduce its awards.

   Section 21(3)(g) *Ombudsman Act*

4. I recommend that the Ministry of the Attorney General enter into a formal Memorandum of Understanding with the Criminal Injuries Compensation Board that, by its terms, both respects the independence of the Board and ensures that it will have the administrative support it requires to process claims in a timely and efficient manner and to otherwise fulfill its statutory mandate.

   Section 21(3)(g) *Ombudsman Act*

5. I recommend that the Ministry of the Attorney General undertake a review of the outreach initiatives currently in place to ensure that victims of violent crime are made aware of their rights under the *Compensation for Victims of Crime Act*, and

take all necessary steps to ensure that those entitled to apply for compensation have the knowledge required and support necessary to do so.

Section 21(3)(g) *Ombudsman Act*

6. I recommend that stakeholders be consulted meaningfully in any planning that may be undertaken to modify, replace or abolish the Criminal Injuries Compensation Board.

   Section 21(3)(g) *Ombudsman Act*

7. I recommend that the Ministry of the Attorney General provide the support needed by the Criminal Injuries Compensation Board to accomplish the measures recommended below.

   Section 21(3)(g) *Ombudsman Act*

The Criminal Injuries Compensation Board

The Personal Touch

8. I recommend that steps be taken within the Criminal Injuries Compensation Board to ensure that institutional insensitivity is replaced with a personal touch. In particular, in addition to the other structural changes recommended here:

   a. all staff at the Criminal Injuries Compensation Board should receive formal training in dealing with victims of crime;

   b. practices that discourage applicants from contacting the Board should cease;

   c. each file should be assigned a specific contact person who will bear responsibility for fielding calls related to that file;

   d. individuals who correspond with applicants should include their direct telephone numbers on all communications;

   e. staff should strive to be diplomatic in explaining the delays inherent in the process, and avoid making comments to applicants such as that their files

are at the bottom of "The Bin," or are processed on a first-come, first-serve basis;

f. staff should cease the practice of warning applicants whose documentation is late or deficient that the Board will assume they are abandoning the application if deficiencies are not corrected within a designated time period; and

g. the practice should cease of warning applicants who do not furnish their file numbers.

Section 21(3)(g) *Ombudsman Act*

Supportive and Efficient File Management Practices

9. I recommend that the Criminal Injuries Compensation Board take steps to support applicants in meeting the Board's filing requirements. In particular:

   a. applications and supporting forms, documents and instructions should be reviewed in order to make them as simple and concise as possible; and

   b. regimes should be established to ensure that victims have the assistance they need in completing documentation to support their claims.

Section 21(3)(g) *Ombudsman Act*

10. I recommend that the Criminal Injuries Compensation Board take steps to eliminate delays in processing of documentation. In particular:

   a. upon receipt of the initial application, efforts should be made to identify and forward to applicants in one batch all forms that may be required to fulfill their claims;
   b. police questionnaires should be requested at the time an application is received, and systems should be established to ensure that those questionnaires are completed and returned promptly;

c. instead of returning documents, the Criminal Injuries Compensation Board should amend immaterial or minor errors after credible information is received from the victim or other party preparing the document;

d. the Board should provide its assistance in obtaining required documentation from service providers and agencies (such as hospitals, medical, dental or therapeutic facilities, or funeral homes); and

e. while it is appropriate to request original documents, it should not be insisted upon where the file contains other credible and reliable information capable of establishing the facts at issue on the balance of probabilities.

Section 21(3)(g) *Ombudsman Act*

11. I recommend that the practice relating to the deferral of files pending the ultimate disposition of criminal proceedings be changed. In particular:

a. file processing should be delayed pending the determination of criminal proceedings only where the Board is unable to resolve the claim without the assistance of the verdict of a criminal court;

b. where a deferral is being contemplated pending the ultimate disposition of criminal proceedings, the applicant should be informed of this and given an opportunity to make submissions on the matter. If the decision is taken to defer the decision in the face of objection by the applicant, the applicant should be provided with reasons why the deferral is going to occur; and

c. the practice of requiring the criminal indictment as the only adequate proof that a criminal case has finally been disposed of should cease. Where there is other credible and reliable information that a conviction has been registered sufficient to establish that fact on the balance of probabilities, it should be treated as adequate.

Section 21(3)(g) *Ombudsman Act*

Minimization of Trauma

12. I recommend that steps be taken within the Criminal Injuries Compensation Board to reduce the need for victims to have to relive the crimes against them by needlessly recounting their victimization. In particular:

    a. the practice of requiring different members of the same family to file individual claim forms should cease;

    b. the practice of requiring separate claim forms for compensation and funeral or other expense claims should cease;

    c. when undertaking the review of applications and supporting forms, documents and instructions described in recommendation 9(a), special care should be given to eliminating requests for redundant information;

    d. oral hearings should be held only where a claim cannot properly be adjudicated without testimony, or where the applicant requests one, and

    e. where oral hearings are appropriate for both "compensation" and "expense" claims, applicants should be given the option of having those hearings held simultaneously and accepting any unavoidable delay caused as a result.

Section 21(3)(g) *Ombudsman Act*

The Flexible Use of Discretion

13. I recommend that the Criminal Injuries Compensation Board reconsider those internal policies that impose presumptive limits on types of awards, and where presumptive limits are appropriate, that it make clear in its guidelines, to applicants, and to its adjudicators, that these are not ceilings and that they will be exceeded in appropriate cases.

Section 21(3)(g) *Ombudsman Act*

Delivering Award Information

14. When the Criminal Injuries Compensation Board has arrived at a decision on an award, I recommend that:

    a. the information be confirmed orally to applicants or immediately in writing, and

    b. no award cheques should be delayed in order to reduce the financial burden on the Board or the government.

Section 21(3)(g) *Ombudsman Act*

The Review

15. I recommend that the Criminal Injuries Compensation Board engage in a systematic review of its policies, procedures and practices to ensure that it operates in a compassionate way that respects the dignity of victims, and that all reasonable steps not already identified above be taken to minimize inconvenience to victims in the compensation process, and that it implement any improvements identified by that review.

Section 21(3)(g) *Ombudsman Act*

The Advisory Committee

16. I recommend that the Criminal Injuries Compensation Board establish an Advisory Committee composed and representative of victims, their advocates, and professionals dedicated to serving the needs of victims.

Section 21(3)(g) *Ombudsman Act*

Reporting

17. I recommend that the Criminal Injuries Compensation Board and the Ministry of the Attorney General report to my Office on a quarterly basis concerning the

status of the implementation of my recommendations, until such time as I am satisfied that they have been realized.

Section 21(3)(g) *Ombudsman Act*

Responses

265 The Attorney General wrote to me on Feb. 16, 2007, in response to my preliminary report. His response was timely, thorough and constructive. In his own words, he stated:

> **I share your view that the current compensation system requires immediate action, and longer term assistance to victims**. In particular, we are committed to fully supporting the [Criminal Injuries Compensation Board] to carry out its mandate in a timely and compassionate manner. In fact, the Ministry has already taken a number of steps to address the issues you have raised. In the current fiscal year, for example, the Government has allocated an additional $5.2 million in funding, over and above the Board's current budget, to assist with claims-related costs.
>
> I have also spoken with the CICB Chair and she has agreed to sign a Memorandum of Understanding affirming our mutual determination to implement your recommendations, with due regard for the Board's independence, and ensuring that victims' needs are met in a dignified, timely and respectful way.
>
> We will be immediately moving forward to work with the Board to tackle the caseload, in a manner consistent with your recommendations. Increased financial resources will be directed to the Board for backlog reduction. This will include money for victim compensation, as well as additional adjudicators and staff at the CICB to speed up the compensation process. We expect these measures will go far in providing relief to thousands of victims and addressing the immediate needs of the Board.
>
> In addition, the Government will begin a process to overhaul the current compensation scheme to maximize provincial resources to benefit the greatest number of victims in the most effective ways. Consistent with recommendation number 7, the Ministry will accomplish these objectives by retaining independent expertise to undertake meaningful, thorough and broad-based consultations on a proposed framework with stakeholders from victims' organizations and communities. [...]

> **In closing, it is my intention to implement your recommendations. Our plans will be in place by August 15 of this year.** (Emphasis added).

266 I was very impressed by the response of the Ministry of the Attorney General to the report, a response which would go a long way to dealing with the many concerns expressed to us by victims of crime who have had the misfortune of dealing with the Criminal Injuries Compensation Board.

267 In contrast, the Board's response was singularly and surprisingly unimpressive. Here are a few excerpts from the letter the the Board Chair wrote to me on Feb. 16, 2007:

> In the broadest of terms, we agree that chronic underfunding has resulted in a lack of resources for the administration of the Compensation for Victims of Crime Act (CVCA) and has in no uncertain terms created a backlog in the processing and adjudication of applications for compensation. We also strongly agree that this is unacceptable and needs to be rectified as soon as possible. [...]
>
> Although every effort is made by the Board to assist applicants, where appropriate the Board has a responsibility to ensure that the application process and hearings are carried out on the basis of procedural fairness. [...] The Board receives very few complaints from applicants with respect to their contact with the staff here. On the other hand, we do, however, receive many positive comments in this regard.
>
> We do not agree with your finding as a fact, that the Board uses process delay as a strategy in order to manage within its budget allocation. In meeting its statutory obligations, the Board does require that applicants provide documentation or other credible evidence in support of their claims. Most often this evidence comes from third parties and takes time to gather. [...]
>
> We believe that the Board's general practice with respect to applications in which there are outstanding criminal charges is correct. [...]
>
> Our legislation requires that when an applicant makes claims for financial losses he/she must prove that those losses did occur as a result of the crime of violence for which he/she is seeking compensation. [...] The Board has a duty to ensure that compensation is appropriately and fairly awarded and in so doing, requires verification of those claims. [...]

> It is clear from your preliminary report that the Board needs to improve how it communicates with victims. [...] The Board is, with the proper resources, prepared to review our policies and practices in light of your recommendations.

268 The Board's position can only be characterized as a "batten down the hatches and sail through the storm instead of fixing the problems" approach. Rather than trying to find ways within its current legislative framework to lighten the heavy emphasis on officialdom and red tape in which the Board is effectively drowning, it appears quite content with the status quo on the basis that it is justified by such catchphrases as "procedural fairness." Beyond a vague commitment to improving how it communicates with victims, there has been no undertaking to conduct a complete overhaul of how they deal with victims of crime who turn to them for assistance. The Board ignores – with breathtaking insouciance – the well-documented lack of sensitivity it has displayed towards its clientele, though it is quite happy to take a greater government handout. Sadly, it proposes to take the money and run – without binding itself to any corrective measures.

269 It is clear to me that the Criminal Injuries Compensation Board just doesn't get it. The attitude expressed in its response to my report threatens to spike any meaningful reform. Instead of victims of crime having to put up with a bloated, rigid, uncaring and unresponsive bureaucracy, they would be dealing with a bloated, rigid, uncaring and unresponsive bureaucracy that burns through more cash.

270 So where does all this lead us? On one hand, the responsible Ministry is prepared to act diligently and move forward to fixing its share of the problem, while the quasi-judicial tribunal is taking a "damn the torpedoes but thanks for the extra cash" approach. Tellingly, the Board's response to my report is consistent with how it has treated aggrieved victims of crime, right down to referring to it as just another "file" as opposed to a report directed to them.

271 The government will be unable to correct these problems without the Board's co-operation, which is clearly not forthcoming at this time. I fear that victims of crime will again be left in the lurch, put through the wringer by a bureaucracy in denial. I strongly urge the government to keep this in mind when it is carrying out the consultations it has committed to conduct in Recommendation 6 as it determines whether to "modify, replace or abolish" the Criminal Injuries Compensation Board. In view of the intransigence towards reform

demonstrated by the Board, it behooves me to suggest that a fertile area for discussion and consultation ought to be whether the Board should be supplanted by a more results-oriented body that better serves the needs of victims of crime.

André Marin
Ombudsman of Ontario

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